Constitutional Change and Democracy in Indonesia

Donald L. Horowitz

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After the fall of its authoritarian regime in 1998, Indonesia pursued an unusual course of democratization. It was insider-dominated and gradualist, and it involved free elections before a lengthy process of constitutional reform. At the end of the process, Indonesia's amended constitution was essentially a new and thoroughly democratic document. By proceeding as they did, the Indonesians averted the conflict that would have arisen between adherents of the old constitution and proponents of radical, immediate reform. Gradual reform also made possible the adoption of institutions that preserved pluralism and pushed politics toward the center. The resulting democracy has a number of prominent flaws, many attributable to the process chosen, but is a better outcome than the most likely alternatives. Donald L. Horowitz documents the decisions that gave rise to this distinctive constitutional process. He then traces the effects of the new institutions on Indonesian politics and discusses their shortcomings as well as their achievements in steering Indonesia away from the dangers of polarization and violence, all the while placing the Indonesian story in the context of comparative experience with constitutional design and intergroup conflict.

Donald L. Horowitz is James B. Duke Professor of Law and Political Science at Duke University and a Fellow at the National Endowment for Democracy. He has previously been a Centennial Professor at the London School of Economics and a Carnegie Scholar. Elected to the American Academy of Arts and Sciences, he has served as president of the American Society for Political and Legal Philosophy. In 2009, Horowitz was presented with the Distinguished Scholar Award by the Ethnicity, Nationalism, and Migration Section of the International Studies Association, and in 2011 he was awarded an honorary doctoral degree by the Flemish-speaking Free University of Brussels. He is the author of six previous books, including *The Courts and Social Policy*, which won the Brownlow Prize of the National Academy of Public Administration; *A Democratic South Africa?*, winner of the Bunche Award of the American Political Science Association; and the acclaimed *Ethnic Groups in Conflict*. In 2013, Professor Horowitz will be a Fellow of the American Academy in Berlin, working on a book on constitutional design for divided societies, a subject on which he has advised in a number of countries.

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CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE UNIVERSITY PRESS
Cambridge, New York, Melbourne, Madrid, Cape Town,
Singapore, São Paulo, Delhi, Mexico City

Cambridge University Press
32 Avenue of the Americas, New York, NY 10013-2473, USA

www.cambridge.org
Information on this title: www.cambridge.org/9781107641150

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First published 2013

Printed in the United States of America

A catalog record for this publication is available from the British Library.

Library of Congress Cataloging in Publication Data
Horowitz, Donald L.
Constitutional change and democracy in Indonesia / Donald L.
Horowitz.
p. cm. – (Problems of international politics)
Includes bibliographical references and index.
ISBN 978-1-107-02727-5 (hardback) – ISBN 978-1-107-64115-0
1. Indonesia – Politics and government – 1998– 2. Democratization – Indonesia –
History. 3. Democracy – Indonesia. 4. Constitutional history – Indonesia. I. Title.
JQ776.H67 2012
320.9598–dc23 2012006880

ISBN 978-1-107-02727-5 Hardback
ISBN 978-1-107-64115-0 Paperback

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For the memory of Samuel P. Huntington

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Preface

There is some consensus among political scientists and constitutional lawyers that the choice of process matters for constitution making. Likewise, the choice of political institutions matters for democratization and for the reduction of the conflict potential of ethnic or cultural cleavages. There is, however, no consensus on which process and which institutions are most apt for these objectives. In considerable measure, this is because the search for broad generalizations has obscured the importance of starting conditions for making appropriate processual and institutional choices in particular countries.

Initial conditions, especially the relations of political forces and the structure of cleavages, are constraints that limit choices and suggest to decision makers what may be suitable methods of proceeding and ways to structure the reformed political system. There is, then, no universal solvent in choice of constitutional reform process or in institutional arrangements to reduce conflict in ways that comport with democracy. Rather, there are likely to be several appropriate paths for each, including Indonesia's.

Following a long period of authoritarian rule that ended in 1998, Indonesian politicians made a number of critical choices, first about the process by which they would reform their political institutions and then about what those institutions should be. The distinctive problems they faced and the specific fears they entertained shaped the way they chose to do their job. That process in turn affected the bargains they struck and the political structures they created, as well as the old-regime practices they left intact. To understand this causal chain, it is necessary to ask why the Indonesian democratizers and constitution drafters took the steps they

did in the sequence they did – in other words, to explicate the micrologic of the process and its results.

On the whole, the distinctive Indonesian path to reform was well suited to the situation that confronted the participants and for the aims and apprehensions that animated them. This is true even though they utilized an in-house and nonparticipatory process of constitutional renovation that some scholars regard as inappropriate for crafting democratic institutions. Their institutional choices also had a generally benign impact on the rather dangerous conflict situation that the country faced as it made the transition to democracy. The Indonesian reformers chose certain institutions that tended to reinforce a multipolar structure of cleavages and to avert the emergence of more dangerous bipolar alignments. These institutions also made political cooperation across the lines of multiple groups attractive to politicians operating under those institutions. Some of these choices were made with such effects in mind, while others were made on other grounds and produced their effects on group relations inadvertently.

Challenges in group relations in Indonesia certainly persist, and there are recurrent problems in the polity that have been neglected or treated inadequately. The particular process that was chosen in Indonesia had its costs. Moreover, the Indonesians have by no means finished tinkering with their political institutions. Further refinement of some political structures – such as a better-designed upper house – could create a stronger democracy. Amendment of others – such as an electoral system that dramatically reduces the number of parties – might well produce retrogression in the handling of group relations by the political system.

Nevertheless, there is no gainsaying the Indonesian achievements, which have brought the country very far from where it was in 1998. What the Indonesian experience shows is that unconventional processes can produce democratic outcomes and that unusual configurations of institutions can produce political incentives for intergroup accommodation.

As the research and writing for this book were being carried out, I incurred a great many debts. Released time was provided by a generous Bost Research Professorship, funded by the Charles A. Cannon Trust, at Duke Law School. Grants for the larger constitutional design project in which this book began its life were provided by the United States Institute of Peace, the Harry Frank Guggenheim Foundation, and the Carnegie Scholars Program of the Carnegie Corporation. I am grateful to all of these grantors. I have also been heavily dependent on the resourcefulness of librarians, in this case most notably the extraordinary reference services provided by Melanie Dunshee, Molly Brownfield, and Jennifer

Behrens at Duke. Research assistance was provided by Ong Kian Ming, Anoop Sadanandan, Melissa Meek, and Simon Weschle, all of whom made important contributions to the project at various stages. Dian Abdul Hamed Shah made particularly helpful and substantial contributions toward the end of the project. My faculty assistant, Tia Williams, provided indispensable help along the way. Several of the chapters were written during stays at Robert Black College of Hong Kong University, which is well known around the world for its congenial atmosphere and friendly staff.

At several points, the research was facilitated by conversations with, suggestions from, and/or critical readings by, R. William Liddle, Blair King, Harold Crouch, Allan Bell, Dan Slater, Robert Cribb, Eddie Malesky, Arief Surowidjojo, Melvin Leffler, Alasdair Bowie, Aziz Huq, and two extremely helpful anonymous readers for Cambridge University Press. Andrew Ellis deserves special thanks for inviting me to participate from time to time in his enterprise at the National Democratic Institute's Jakarta Office and to benefit from his many insights into the Indonesian constitutional process. The results are visible in the footnotes that refer to his NDI reports and to some interviews that we conducted jointly as well. During one stay, I also benefited from use of the facilities of the Freedom Institute, for which I am grateful. Finally, the coeditor of this series, Ian Shapiro, provided important assistance in the course of the publication process. None of these people bears the slightest responsibility for what is contained in this book.

Material from the book has been presented in lectures, conferences, and workshops at the Indonesian Institute of Sciences, the University of Indonesia, Bowdoin College, the University of Hawaii Law School, the George Washington University Law School Roundtable in Comparative Constitutional Law, the Association of Asian Studies, the George Washington University Comparative Politics Workshop, the University of Malaya Law Faculty, the Universiti Sains Malaysia Political Science Department, Institut Kajian Malaysia dan Antarabangsa, the University of Chicago Law School Conference on Comparative Constitutional Design, the German Institute of Global and Area Studies, the UCLA Human Rights Colloquium, and the Democracy Series at the Ash Center of the Kennedy School at Harvard University. I profited from critiques offered in these forums and from the hospitality of my hosts, most notably Ericka Albaugh, Alison Conner, David Fontana, Henry Hale, Khadijah Khalid, Rahman Embong, Tom Ginsburg, Matthias Basedau, Andreas Mehler,

Richard Steinberg, and Tarek Masoud. As usual, I also benefited from the subtle, patient prodding, tolerance, and support of my wife, Judy.

Between 1998 and 2009, I made five trips to Indonesia. The interview material I gathered there was based on a promise of anonymity to my respondents, most of whom were politicians, government officials, or NGO activists. For this reason, they are identified in footnotes only by their place in my field notes (abbreviated F.N., followed by volume and pages) and, where useful, by a short parenthetical description that enables the reader to place the respondent in the Indonesian political firmament.

This book is dedicated to the memory of Samuel P. Huntington. It is not the first book to be so dedicated, and it will not be the last. Sam Huntington had his own distinctive style and on occasion, as he himself said, a penchant for controversy. Yet he was eager to exchange ideas and had a certain catholicity of taste that led him habitually to gather round himself at the Harvard Center for International Affairs groups of young scholars whom he encouraged to go out and explore politics all over the globe. I was a beneficiary of that encouragement from graduate school on. That encouragement, together with the example of his piercing intellect, created for me an enduring bond, as it did for so many others.

Donald L. Horowitz
May 30, 2012

SEPTEMBER 2011

IBRD 38875

MAP OF INDONESIA

Source: Printing, Graphics, and Map Design, General Services Department, the World Bank.

PANCASILA

KETUHANAN YANG MAHA ESA

KEMANUSIAAN YANG ADIL DAN BERADAB

PERSATUAN INDONESIA

KERAKYATAN YANG DIPIMPIN OLEH HIKMAT KEBIJAK-SANAAN DALAM PERMUSYAWARATAN / PERWAKILAN

KEADILAN SOSIAL BAGI SELURUH RAKYAT INDONESIA

Glossary

aliran Literally, streams, denoting cultural communities, such as traditionalist Muslims, modernist Muslims, syncretists, and secularists.

Barisan Nasional National Front, an organization founded in Indonesia to insure that the country continued to have a secular state after the fall of Suharto in 1998; it was led by former military officers concerned about Muslim influence under then-president B. J. Habibie.

bupati An elected head of a *kabupaten* or regency.

DPD Dewan Perwakilan Daerah, the Regional Representatives Council, a second house of the legislature to represent provincial interests, but with very limited powers.

DPR Dewan Perwakilan Rakyat, the People's Representatives Council, the powerful lower house of the Indonesian legislature.

DPRD Dewan Perwakilan Rakyat Daerah, the Council of Regional People's Representatives, the local legislatures for regional governments.

Forum Kota City Forum, a student organization active in organizing street demonstrations against Suharto in 1998.

fraksi A fraction (faction) in the legislature, consisting of members of a party or parties.

Gerindra Partai Gerakan Indonesia Raya, the Great Indonesia Movement Party, a small secular party founded by Prabowo Subianto, former commander of the army special forces.

Golkar Partai Golongan Karya, the Party of Functional Groups. Originally Suharto's ruling party, it entered democractic political competition after his fall. Officially secular, it aspires to be a catchall party that appeals to Muslims and religious minorities alike.

Hanura Partai Hati Nurani Rakyat, the People's Conscience Party, a small secular party formed by former army commander Wiranto.

ICMI Ikatan Cendekiawan Muslim Indonesia, the Indonesian Association of Muslim Intellectuals, founded in 1990, supported by Suharto, and led by B. J. Habibie, who eventually became his vice president and then successor as president when Suharto resigned. Because of its patronage by Suharto, ICMI's founding signaled a turn by the then-president toward Islamic forces that could be influential in the regime.

kabupaten A regency or subdivision of a province, headed by an elected *bupati* or regent. Also called a district.

kota A city, headed by an elected *wali kota* or mayor.

Masjumi A modernist Muslim party of the 1940s and 1950s that was outlawed by Sukarno in 1960.

modernist Islam In Indonesia, a version of Islam that relies mainly on the Qu'ran and the Hadith, is often skeptical of interpretations drawn from later sources, and is hostile to syncretist practices. See also Muhammadiyah.

MPR Majelis Permusyawaratan Rakyat, the People's Consultative Assembly. Composed of the DPR and DPD, it has limited powers, principally concerning constitutional amendments and impeachment. Previously, it had power to choose the president and vice president and was said to be the repository of Indonesia's sovereignty.

Muhammadiyah The largest organization of modernist Muslims.

NU Nahdlatul Ulama, Awakening of the Religious Scholars, the largest organization of traditionalist Muslims.

PAH I Panitia Ad Hoc I, Ad Hoc Commission I, set up within the MPR in 1999 to draft amendments to the constitution.

PAN Partai Amanat Nasional, the National Mandate Party, founded by Amien Rais, the former leader of Muhammadiyah. In spite of its roots in modernist Islam, the party has been open to non-Muslims.

Pancasila Five Principles, the official ideological foundation of the Indonesian state, found in the preamble to the constitution. The principles consist of belief in one God, a just and civilized humanity, the unity of Indonesia, democracy guided by wisdom and deliberation, and social justice.

PBB Partai Bulan Bintang, Star Crescent Party, an Islamic party in the modernist Masjumi stream. The party failed to meet the threshold for legislative representation in 2009. See also Masjumi.

PD Partai Demokrat, the Democratic Party of Susilo Bambang Yudhoyono.

PDI Partai Demokrasi Indonesia, one of the three officially permitted parties in President Suharto's authoritarian New Order regime.

PDI-P Partai Demokrasi Indonesia-Perjuangan, the Indonesian Democratic Party-Struggle, founded by Megawati Sukarnoputri after she was ousted from leadership of the PDI by allies of Suharto in 1996. A strongly secular party representing abangan Muslims, religious syncretists, and minorities.

PDS Partai Damai Sejahtera, the Prosperous Peace Party, a small Christian party with support in certain regions with large Christian populations. The party has antecedents in a Protestant party that gained legislative representation in the 1950s but failed to meet the threshold for seats in the 2009 national election.

PKB Partai Kebangkitan Bangsa, National Awakening Party, founded in 1998 by Abdurrahman Wahid and heavily based on NU, the traditionalist Muslim organization he led.

PK(S) Partai Keadilan, succeeded by Partai Keadilan Sejahtera, the Prosperous Justice Party, an Islamist party in the modernist stream. PKS grew out of student Islamic associations and has gained most support from educated youth and in urban areas.

PPP Partai Persatuan Pembangunan, Development Unity Party, a Muslim party with roots in both traditionalist and modernist Islam. Originally one of the three officially permitted parties of President Suharto's New Order, it entered democratic competition after his fall.

santri Observant or orthodox practice of Islam.

Tim Tujuh The Team of Seven, a group of civil servants and academics charged by President Habibie in 1998 with drafting a series of political reform laws.

traditionalist Islam In Indonesia, a version of Islam that relies on interpretation by scholars since the time of the Prophet Mohammed and is often accommodating of local custom. See also NU.

wali kota An elected mayor of a city.

1

A Distinctive Path

The unanticipated fall of Suharto in May 1998 left standing a disparate cast of political leaders, who eventually settled upon an unusual strategy of democratic reform. The path they chose had three main characteristics.

First, it was insider dominated. An important role was played by leaders active in the former authoritarian regime who were now operating in a genuinely competitive environment. Those leaders and the former opposition leaders who joined them in the legislature after elections pursued radical constitutional change intramurally, without resort to a constitutional commission or a convention and with relatively little consultation with civil society bodies or the public at large. The revised constitution was unequivocally the politicians' product. It was not subject to any outside approval process. It was an inside job.[1]

Second, the sequence of reform put elections before constitutional change. Given Indonesia's authoritarian history, legitimation at the polls might have been seen as empowering newly elected legislators and allowing them to stop short of developing a fully liberal democracy, but putting elections first actually had a different effect; it opened up a competitive process that carried even the most reluctant democratizers along and conferred sufficient authority on the legislators to pursue a full course of reform, which is what they did.

[1] Although the reform process ended by being insider dominated, it did not begin that way. In the first several months after Suharto's resignation, civil society had a strong voice in advocating particular constitutional changes, and until the election of 1999 the government of B. J. Habibie, who succeeded Suharto, had the initiative, which it exercised mainly through a team of experts. After the election, however, control of the process passed to elected legislators, many of them holdovers from the previous regime.

Third, the constitutional reform was accomplished over several years. The first of four major constitutional amendments was enacted in October 1999, the last in August 2002, but some of the most important political changes were embodied in statutes on political parties, elections, government structure, and devolution. All of these can be regarded as constitutional provisions that are not entrenched in the formal document and are therefore subject to a less difficult amendment process.[2] Their enactment stretched from 1999 to at least 2004 and, by some reasonable reckonings, all the way to 2008 or even later. So it is fair to say that the Indonesian reform process consumed the greater part of a decade.

It is true, of course, that none of these three characteristics was unique to Indonesia. After 1989, Hungary and Poland also chose the path of legal continuity, amending their constitutions after elections, rather than scrapping the authoritarian documents. Spain held elections first and then took two years to produce a constitution, but it also held a referendum. More often than not, however, elections signify the end of a transition process rather than its beginning, and most constitutional reform processes do not move at a pace as leisurely as Indonesia's. Similarly, many countries involve insiders at some stage of the constitutional process, but few exclude outsiders as completely as the Indonesian insiders did. The sum of the characteristics of the process is what stamps Indonesia as distinctive, if not unique.

The incremental, gradualist strategy the politicians chose responded unusually well to the circumstances in which they found themselves, characterized as they were by strong constitutional dissensus and a crisis atmosphere at the outset. Both of these characteristics dissipated over time.

The insider-dominated, somewhat unusually sequenced, and unhurried nature of the Indonesian reform succeeded in bringing about a constitutional democracy and steered Indonesia away from the dangers of ethnic and religious polarization and violence. It also made a resurgence of military authority in civilian politics more difficult than it might otherwise have been.

Although these were formidable accomplishments, there were costs to this strategy of democratization. For one thing, early elections and insider domination made possible the survival of remnants of the old regime, both its personnel and its practices. Embedded corruption was not uprooted, very little justice was meted out to malefactors of the old regime, and some

[2] See Ernest A. Young, "The Constitution Outside the Constitution," *Yale Law Journal*, vol. 117, no. 3 (December 2007), pp. 408–73.

old, dubiously democratic habits persisted.[3] There is, therefore, more democratic work to be done in Indonesia.[4] The methodically incremental course that was followed also meant that there was no democratic epiphany, no single moment of revolutionary transformation. For this reason, some Indonesians and some outside experts maintain a gloomier assessment of the reform than is warranted by its achievements.

The voluminous literature on democratic transitions deals endlessly with preconditions, alignments, and negotiations in the process of democratization, but rarely, if ever, discusses the relative costs of alternative processes of democratization. The Indonesian case raises this question insistently.

The strategy that was chosen in Indonesia should be judged by the most likely counterfactuals, by, in other words, what a different course would have risked, viewed at the start of the process. Constitutional change before elections would have required that democratic actors be constituted – really, self-appointed – without legitimacy, for, as we shall see, the democratic opposition was fragmented, and parts of it were compromised by connections to the former regime. Extramural reform, by a separate appointed or elected body, might have produced a new constitutional dispensation much more quickly, but that was precisely its hazard. While much of the opposition to Suharto's regime was committed to a reconstruction of the constitution along liberal democratic lines, a significant body of Indonesian political opinion, although staunchly opposed to Suharto, was not convinced that Indonesian institutions needed a thoroughgoing renovation. Indeed, one powerful segment of the political elite was strongly attached to the 1945 constitution under which Suharto had purported to operate. Quick and radical change, rather than the slow but equally radical change that was accomplished, would have turned constitutional dissensus into open constitutional conflict. This might have jeopardized approval of the constitutional change process altogether or, had it nevertheless proceeded, jeopardized approval of the document such a process produced. Worse, had a document been approved over the objections of a strong and cohesive minority, the process would have impaired public acceptance of the new dispensation and exacerbated

[3] For an enumeration of these costs, see Edward Aspinall, "Indonesia: The Irony of Success," *Journal of Democracy*, vol. 21, no. 2 (April 2010), pp. 20–34. Similar criticisms were voiced about the implications of comparable strategies of democratization in Eastern Europe. For an interesting treatment, see Andrew Arato, *Civil Society, Constitution, and Legitimacy* (Lanham, MD: Rowman & Littlefield, 2000), pp. 167–97.

[4] For reservations about the quality of Indonesian democracy, see Chapter 7, below.

Indonesia's social conflicts, possibly even to the point of serious violence. A one-shot process would also have tested the willingness of the armed forces to have their prerogatives curtailed, whereas incremental curtailment proved to be acceptable.

Even had a one-shot, extramural process – through a commission or an elected convention or constituent assembly – managed to produce a draft constitution, it would almost certainly have established a set of institutions quite different from the ones ultimately adopted. As I shall point out in Chapter 5, two designs, each the polar opposite of the other, had the best chance of success *ex ante*. Yet each would have been merely a momentary success, for one would have disappointed the proponents of radical constitutional change, and the other would have galvanized the strong opposition of the remaining friends of the old constitution. Either alternative was fraught with grave risks.

To be sure, it is not possible to imagine exactly what would have transpired in a one-shot process, but there is every reason to think that the most recent history, the emotions of the moment, and the interests temporarily ascendant would have been predominant in a rapid constitutional change – or, alternatively, the process would have bogged down in a deadlock from which there might have been no escape. What happened instead was that the passage of time, the elections that were held in 1999, and the subsequent commencement of an orderly, unhurried procedure operated to dissipate the crisis atmosphere of 1998. As the constitution was being reformed in the years that followed, intervening events and crises created lessons that changed the minds of some decision makers, particularly the minds of those who had been attached to the old institutions and had the power to veto radical constitutional reform. Slowly, they altered their views about the scope of constitutional change that was acceptable and about the shape of the new institutions that would be most appropriate for the country. One of the many paradoxes of the course chosen is that the constitution crafted by insiders, some of them tainted by their former affiliation or collaboration with the old regime, was more democratic (and more effective) than at least some of the constitutions that likely would have emerged from a more detached, more consultative, more participatory, and more rapid process of change.

The achievements of the course that was pursued are remarkable, because full democratization through such a course seems in retrospect to have been unlikely. Brought about by insiders in an environment with little history of democratic praxis, with segments of the military watching apprehensively a process steered by a politician the army regarded as a

dangerous, untrustworthy radical,[5] with important elements of public opinion skeptical and even distrustful, the incrementalist procedure might have been hospitable to stopping short of what could have been seen as a distant goalpost. Indeed, the earliest draft produced confirms the strong possibility of a strictly limited reform.[6] The prospect of a limited reform, viewed *ex ante*, seems all the more probable, because the old-regime constitution being abandoned step by step would have allowed insider legislators to retain considerable power. Instead, they ended up giving over substantial power to a new, separately elected president, a new constitutional court, and regional authorities. They also accepted multiple new constitutional restraints on the reduced authority they themselves retained.[7]

Indonesia could certainly have become a semidemocracy, somewhat on the model of Malaysia, or a civilian regime under the watchful and authoritative eye of the military, on the model of Thailand. It became neither, and, perhaps above all, it was not consumed in violence, as it had been on a previous occasion of regime change. Under the new dispensation, the streets of Jakarta became quiet, and most of the violence that had engulfed various parts of the archipelago in the 1990s and after was slowly brought under control.[8]

ENDOWMENT AND CHOICE

The Indonesian tale is not, it should be emphasized, a just-so story, for there are considerable imperfections in Indonesian democracy; it is simply a far-better-than-it-might-have-been story. It is such a story because of the way political leaders chose to proceed, opting for a course that risked public confidence in what they were doing, for the sake of avoiding even greater risks.

[5] Namely, Amien Rais, who became chair of the supralegislative body with the power to amend the constitution. See Marcus Mietzner, "From Soeharto to Habibie: The Indonesian Armed Forces and Political Islam during the Transition," in Geoff Forrester, ed., *Post-Soeharto Indonesia: Renewal or Chaos?* (New York: St. Martin's Press, 1999), pp. 65–102, at p. 99.

[6] See Chapter 4, below.

[7] For the early emphasis in democratization studies on institutions that induce politicians to behave in democratic ways, see Dankwart Rustow, "Transitions to Democracy: Toward a Dynamic Model," *Comparative Politics*, vol. 2, no. 3 (April 1970), pp. 337–63.

[8] For the violence of this period, see Jacques Bertrand, *Nationalism and Ethnic Conflict in Indonesia* (Cambridge: Cambridge University Press, 2004), pp. 114–83.

In the course of the transition, certain features of Indonesia's social endowment,[9] particularly the structure of its cleavages and its emerging party system, proved to be felicitous conditions. Indonesia has strongly felt ethnic, religious, and cultural differences, which I shall describe in Chapter 2. At local levels, there is a plethora of ethnic groups, and some of their relationships can become quite conflictual. At the all-Indonesia level, the picture is quite different. At this stage, for simplicity, we can speak of Outer Island sentiments against Javanese domination, as well as differences among modernist Muslims, traditionalist Muslims, and secular nationalists – the last category including, but not limited to, religious minorities and unorthodox or syncretist Muslims. In ordinary times, these cleavages are not bipolar. Moreover, differences *within* cultural streams or groups are as much reflected in a fragmented party system as are differences *between* them. This pattern implies that clear winners and losers are often harder to discern than in a less complex configuration of cleavages, but it also makes consensus difficult to achieve, and it certainly does not obviate the existence of veto players, those who can either thwart action or make it very costly. Their existence was a major reason for proceeding gradually.

To some degree, Indonesia's successful reform is attributable to this endowment. The choice of process reflected an assessment of these features of the environment. But it is equally true that some of the earliest institutional choices made by the reformers reinforced or altered some parts of that environment. In particular, the electoral system for the national legislature perpetuated the plurality of social cleavages and political parties. The result was that intragroup differences were and are well reflected in the party system. Because of intrabloc party competition, it is difficult for completely solidary opposing blocs to develop, and it is imperative that all actors consider an array of partners, even across cleavage lines, in order

[9] *Endowment* may seem a loaded word in this context, for it suggests a rigid set of affiliations and so neglects their situational and malleable character. That is not the connotation I intend. On the contrary, my argument is precisely that Indonesia's cleavages were in some danger of crystallizing in a bipolar way at the outset of the transition but that the political institutions adopted in the course of democratization helped avert such an outcome. All I mean by *endowment* is the total configuration of plausible affiliations and cleavages at the outset of the process. For a subtle treatment of some of these divisions, see J. D. Legge, *Sukarno: A Political Biography* (New York: Praeger, 1972), pp. 47–48. Similarly, although I speak loosely of *groups*, some of the main differences in Indonesia are not between ethnic or religious groups as such but between tendencies, streams of thought, subcultures, or traditions, but very often these are reflected in politics in much the same way as differences between ethnic groups might be.

to accomplish their agendas. This was by no means the deliberate result of the reformers' calculations. On the contrary, they aimed continually to simplify the party system. Yet the more complex system they produced has served the cause of conflict reduction well.

Other institutional choices made during the reform process also had an important part to play in smoothing the rough edges of intergroup relations. Some of those institutional choices made it exigent for political leaders, at both national and local levels, to form explicit coalitions across group lines. Again, it cannot be claimed that this was entirely deliberate on the part of the drafters, because they were impelled to make these choices largely as a result of the incremental process they were embarked on, which in turn bound them to their earlier choices and narrowed their remaining options. For instance, arrangements for the election of a president and vice president were conditioned by the contours of the emerging party system, which was influenced heavily by the choice of a legislative electoral system made years earlier in the process. Without doubt, the reformers wished to promote presidential–vice presidential tickets that would span cleavage lines, but they were constrained to choose a method that would produce this result by the party system that had emerged by the time they made these choices near the end of the process of constitutional change.

Deliberately or not, the specific configuration of institutions shaped by the constitution tended to soften the impact of the cleavage structure in politics. Starting with what was, at least at the national level, a cleavage endowment that could be described as generally multipolar rather than bipolar, the Indonesian constitutional reformers chose institutions that solidified multipolarity in both party politics and group relations and, at the same time, provided important, self-interested reasons for politicians to establish ties across cleavage boundaries. In both of these ways, they reduced the likelihood that bipolar divisions would emerge, and in general they reduced the intensity of group differences, creating what so far has become a relatively benign system of multipolar fluidity.[10]

The interplay of (1) the reform process chosen, (2) the social differences so strongly manifested in politics, and (3) the specific institutions that emerged from the reform process accounts for the democratic outcome. The single most important factor, however, was the course that was chosen, because that course was mainly responsible for the choice of the

[10] For the positive role of multipolar fluidity in mitigating conflict, see Donald L. Horowitz, *Ethnic Groups in Conflict* (Berkeley: University of California Press, 2000), pp. 612, 632–38.

institutions that emerged. In this, political leadership was an essential ingredient. Any credible account of the transition in Indonesia must give great weight to the strategies pursued by post-Suharto leadership, even as it pays close attention to the environment in which that leadership was immersed and to the institutions the leaders shaped.[11]

INDONESIA'S PROCESSUAL DEVIATIONS

Indonesia's constitutional reformers disappointed expectations about how democratic transitions generally proceed and about how new constitutions are made. Although there is no definitive sequence of democratic change, in the still-burgeoning literatures on democratic transitions and on constitutional design and process, there are several emergent ideas about who the main actors are, what roles they are likely to play, what strategies and devices they customarily utilize, and what rules, procedures, and institutions they ought to put into place in order to achieve successful results. It would be too strong to call this a consensus, and indeed there are two literatures – one a mainly behavioral set of findings on transitions, the other a mainly normative set of prescriptions for constitution making – each setting out what might be described as something like standard operating procedures. The Indonesians broke both.

Indonesia's course was deviant in several respects. To begin with, before May 1998 there was no serious split within the ruling authoritarian elite, a condition usually regarded as highly conducive to regime change.[12] Suharto's regime had grown increasingly autocratic and personalistic, so that there was no space for soft-liners or reformers inside the regime possessing the authority to negotiate with democratizers outside it.[13] Even if there had been such actors inside the regime, there was no single

[11] For the actor-oriented foundations of democratization studies, see Guillermo O'Donnell and Philippe C. Schmitter, *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Democracies* (Leiden: Brill, 1986).

[12] Ibid., pp. 15–17; Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1991), p. 122; Valerie Bunce, "Comparative Democratization: Big and Bounded Generalizations," *Comparative Political Studies*, vol. 33, nos. 6–7 (August–September 2000), pp. 703–34, at pp. 707–08.

[13] Edward Aspinall, *Opposing Suharto: Compromise, Resistance, and Regime Change* (Stanford: Stanford University Press, 2005), pp. 208, 238, 240. Compare Stephan Haggard and Robert R. Kaufman, *The Political Economy of Democratic Transitions* (Princeton: Princeton University Press, 1995), p. 26. For a good sketch of Suharto's New Order system, see R. William Liddle, *Leadership and Culture in Indonesian Politics* (Sydney: Allen & Unwin, 1996), pp. 15–36.

authoritative leader on the outside with whom to negotiate. Suharto's use of co-optation and coercion had left the opposition weak and divided. Some plausible opposition leaders had made their peace with the regime. Others had been suppressed or marginalized. Still others declined to take an active part against the regime. In any event, Indonesia's social divisions precluded the emergence of a single leader who could speak for the entire opposition.[14] The elaborate dance of moderates and extremists on both sides was missing in Indonesia, which meant that there could be no negotiated transition. As Edward Aspinall has incisively shown, the regime could be brought down only by a spasm of mobilization in the streets.[15]

The combination of acute crisis, the fragmented opposition, and the lack of planning for a democratic dispensation prevented a quick move by the opposition to a completely new regime with an agreed plan for governance. In fact, there was neither a "pact" between elements in the government and the opposition to secure vital interests on both sides in a gradual transition, as there commonly was in Latin American and southern European transitions, nor a clear, decisive victory for the opposition, as there was in the democratic transitions of Eastern Europe.[16] Rather, when the Suharto regime fell, it seemed to have bounced back, albeit without Suharto. Suharto's successor was the person he had chosen as vice president and who succeeded him according to the rules put in place by the authoritarian regime. His successor in turn, and the one following as well, were chosen by the same rules and by the same body designated by those rules to choose presidents.

During this period, from 1998 to 2002, most of the institutions that had served the old regime were kept in place but were turned to the process of constitutional renovation. New elections were held for the bodies established by the old regime, and a thoroughgoing reordering of political

[14] Aspinall, *Opposing Suharto*, p. 240.

[15] Ibid.

[16] The literature on pacts, beginning with O'Donnell and Schmitter, *Transitions from Authoritarian Rule*, pp. 37–41, is voluminous. For the variety of pacts, see Adam Przeworski, *Democracy and the Market* (Cambridge: Cambridge University Press, 1991), p. 24. Pacts are said to facilitate a transition when neither side is capable of unilateral imposition. When, on the other hand, the democratic opposition is much stronger than the authoritarian opposition, it becomes possible to make a clean break. Bunce, "Comparative Democratization," p. 717; Michael McFaul, "The Fourth Wave of Democracy and Dictatorship: Noncooperative Transitions in the Postcommunist World," *World Politics*, vol. 54, no. 2 (January 2002), pp. 212–44. In Indonesia, as we shall see, there was one agreement, entirely among extraparliamentary opposition leaders, but it was intended simply to allow the post-Suharto regime to proceed with democratic elections.

structures was then accomplished, with many of the former regime's leaders among its architects. Unlikely though it may seem, Suharto's favored institutions were undone using Suharto's favored institutions. By the end of this period, there was a new regime. The change was confirmed by the national elections that followed in 2004 and again in 2009.

It was possible to proceed in this way because, following Suharto's fall, there was a change in legislative personnel. The elections of 1999 brought new parties and new faces into the legislature, along with many of those who had served in the former regime's legislature and had managed to survive free and fair elections surprisingly well. But proceeding in this way, with early elections, also violated one of the caveats of the emerging transitions canon. Reflecting the experience of Bosnia, where elections soon after the end of warfare entrenched ethnically exclusivist leaders and parties, there has been growing skepticism of early elections, elections conducted before a stunted civil society has a chance to emerge from repression and before new parties with national agendas are able to build their support.[17] To a considerable degree, Indonesia's parties reflected social cleavages, and they certainly did not have to pay obeisance to an autonomous civil society. Two of the old regime's parties were able to reconstruct themselves and survive, and they were joined by parties built largely on preexisting associations or segmental affiliations. Indonesia's process ignored the perceived perils of early elections, indeed elections that took place before very much alteration of the regime had taken place – except, of course, alteration of the law sufficient to produce free elections.

Just as Indonesia's transition proceeded unconventionally from the standpoint of the transitions literature, so did it break most of the rules now being laid down by theorists and practitioners of democratic constitution making. These rules concern the personnel and procedures of that process.

A standard prescription and a common, but assuredly not universal, practice are for constitutions to be drafted by specially assembled bodies – conventions or commissions – rather than by legislators who could

[17] See Benjamin Reilly, "Post-Conflict Elections: Constraints and Dangers," in Edward Newman and Albrecht Schnabel, eds., *Recovering from Civil Conflict* (London: Frank Cass, 2002), pp. 118–39; Dawn Brancati and Jack L. Snyder, "Time to Kill: The Impact of Election Timing and Sequencing on Post-Conflict Stability," unpublished paper, Washington University, April 2009. See also Roland Paris, *At War's End: Building Peace after Civil Conflict* (New York: Cambridge University Press, 2004); Richard Rose and Doh Chull Shin, "Democratization Backwards: The Problem of Third Way Democracies," *British Journal of Political Science*, vol. 31, no. 2 (April 2001), pp. 331–54.

benefit from the product they create.[18] Northern Ireland's 1998 Good Friday Agreement was crafted by a body chosen in a special election; Fiji's 1997 constitution was written by an appointed commission chaired by a foreigner who held the casting vote; Nigeria's 1978 constitution was produced in two stages, first by an expert constitution-drafting committee, then by an elected constituent assembly. When such a process is followed, the draft is typically subject to approval by referendum or to amendment and approval in the legislature, but even in the latter case the draft has a starting advantage. Sitting legislators who change its provisions are forced to act in the light of day, and they are unlikely to feel able to scuttle the draft altogether.[19] On this view, the expected sequence for a change of constitutional regime would be an extramural draft, then popular or legislative approval, followed by elections under the new constitution.

Indonesia reversed this sequence. After Suharto's resignation, the Indonesian democratization was begun by government action, followed by cooperation with the opposition. Electoral reform, then elections, and only then constitutional change: this was the way the Indonesian process unfolded. And, as indicated, the Indonesian changes were accomplished entirely by the legislature itself, rather than by any specially chosen outside bodies.

Another frequently advanced precept of constitution making is that the process should be accessible, transparent, and highly participatory.[20] Inasmuch as the constitution is to be the central organizing document of the polity, the citizenry, it is argued, ought to be invested in it. There ought

[18] See Jon Elster, "Forces and Mechanisms in the Constitution-making Process," *Duke Law Journal*, vol. 45, no. 2 (November 1995), pp. 364–95. Other strictures, designed to heighten the role of reason and to subdue the roles of passion and interest, relate to mode of election of the constituent assembly, its size, and secrecy or publicity in its deliberation. See Jon Elster, "The Optimal Design of a Constituent Assembly," in Hélène Landemore and Jon Elster, eds., *Collective Wisdom* (forthcoming, Cambridge: Cambridge University Press, 2013).

[19] But see Jill Cottrell and Yash Ghai, "Constitution Making and Democratization in Kenya," *Democratization*, vol. 14, no. 1 (February 2007), pp. 1–25.

[20] See ibid.; Yash Ghai, "Constitution-making in a New Iraq," in Yash Ghai et al., *Building Democracy in Iraq* (London: Minority Rights Group, 2003), pp. 27–38, at p. 29; Vivien Hart, "Democratic Constitution Making," United States Institute of Peace Special Report no. 107, Washington, DC, July 2003; Nathan J. Brown, "Iraq and the New Constitutionalism," paper presented at the annual meeting of the International Studies Association, 2006, pp. 1–5; International IDEA, "Constitution Building Processes and Democratization," Stockholm, Institute for Democracy and Electoral Assistance, 2006, pp. 9–16.

to be efforts to educate the public about the fundamental choices it faces and to engage citizens in debate. Public preferences are to reach the drafters and receive thoughtful consideration. The result should be a set of institutions embraced by a public that has had its say and been heard. If this occurs, there is said to be "democratic empowerment"[21] and greater legitimacy for a constitution[22] that is "owned by all the people."[23] That, at any rate, is the thrust of some of the newer literature on constitutional development, even if not every author concurs on every point.

The Indonesian process bore no resemblance to this script. For reasons to be laid out, it would have been difficult to explain to a certain fraction of the Indonesian public that the 1945 constitution needed fundamental revision, as indeed it proved difficult to explain this to a significant fraction of legislators. An early public debate would have risked stalemate and even conflict. In any case, constitutional change was treated as the business of the people's representatives, not as the business of the people themselves. Members of all "fractions" – parties or groups of parties – were represented in the committee that drafted constitutional proposals. The process was representative and inclusive, but it was certainly not participatory.

As an empirical matter, there is no single correct or even customary way to create a constitution, much less a democratic constitution. Two large databases on constitutional processes have been assembled, one by Tom Ginsburg, Zachary Elkins, and colleagues for 460 of the 806 constitutions promulgated between 1789 and 2005, another by Jennifer Widner for 194 constitutions produced between 1975 and 2002 for countries deemed to be at risk of conflict. What is clear from both is that there is no dominant mode of proceeding. Rather, there are many different combinations of constitution-making processes and institutions. Ginsburg, Elkins, and Blount list 18 principal permutations, in which the main actors were legislatures, constituent assemblies,

[21] Kirsti Samuels, "*Constitution Building Processes and Democratization: A Discussion of Twelve Case Studies*," Stockholm, Institute for Democracy and Electoral Assistance, 2006, p. 26.

[22] Jon Elster, "Constitution-Making in Eastern Europe: Rebuilding the Boat in the Open Sea," *Public Administration*, vol. 71, nos. 1–2 (Spring–Summer 1993), pp. 169–217, at pp. 178–79.

[23] Commonwealth Human Rights Initiative, "Best Practices of Participatory Constitution Making," 1999, www.humanrightsinitiative.org/programs/ai/const/india/practices.htm. For more injunctions about "national ownership of emerging constitutional arrangements," see *International IDEA Annual Report 2008* (Stockholm: International Institute for Democracy and Electoral Assistance, 2009), p. 33.

executives, and the public via referenda. Only 12 percent were produced by constituent assemblies alone, and only 17 percent by legislatures alone.[24] Widner's categories are different: she enumerates nine main forums from which constitutions emerged. About 14 percent were drafted by constituent assemblies, another 14 percent by transitional legislatures or legislatures sitting as constituent assemblies, more than a quarter by small, usually appointed bodies (commissions, roundtables, or peace negotiators), and most of the rest – about 40 percent – by ordinary legislators.[25] Barely more than 10 percent of constitutions in the Ginsburg-Elkins database were ratified by referenda, but that fraction increased over time; about half of those in Widner's database of more recent constitutions were subject to referenda.[26]

Early analysis suggests no overall relationship between the general mode of proceeding and the democratic or nondemocratic character of the results, undoubtedly because the general mode of proceeding obscures many critical particulars.[27] A good deal of unpacking of aggregate data will be required before confident findings relating process to democratic outcome are available.

The one variable that does seem influential concerns not process but participants. It appears that the more institutional actors – a term that includes collective and individual actors – involved in drafting or approving a constitution, the higher the level of subsequent democracy, the greater the constraints on government, and the greater the durability of

[24] Tom Ginsburg, Zachary Elkins, and Justin Blount, "Does the Process of Constitution-Making Matter?" *Annual Review of Law and Social Science*, vol. 5 (2009), pp. 201–23, at p. 205.

[25] Calculated from Jennifer Widner, "Constitution Writing in Post-Conflict Settings," *William and Mary Law Review*, vol. 49, no. 4 (March 2008), pp. 1513–41; Widner, "Constitution Writing and Conflict Resolution: Reform Models," unpublished paper, Princeton University, n.d.

[26] Ginsburg, Ellis, and Blount, "Does the Process of Constitution-Making Matter?" pp. 206–07; Widner, "Constitution Writing and Conflict Resolution."

[27] Widner, "Constitution Writing in Post-Conflict Settings," pp. 1531–32, 1536. Ginsburg, Elkins, and Blount, "Does the Process of Constitution-Making Matter?" p. 218, sagely recommend "an important role for the careful work of case study literature to try to untangle the causal relationships." After a thorough review of multiple case studies, Laurel E. Miller finds that "the practical purposes of soliciting participation remain underspecified" and that "it is difficult to distinguish the outcomes of the cases where serious efforts were made to involve the public from those where no space was made for participation, or where it amounted to little more than window dressing." Miller, "Designing Constitution-Making Processes: Lessons from the Past, Questions for the Future," in Laurel E. Miller, ed., *Framing the State in Times of Transition: Case Studies in Constitution Making* (Washington, DC: United States Institute of Peace Press, 2010), pp. 636, 637.

the resulting constitution.[28] Elected institutional actors are particularly effective in producing restraints on executives.[29] Referenda to approve constitutions, however, do not appear to have a strong effect on democratic outcomes.[30] The Indonesian process involved many elected institutional actors, but popular participation was conspicuously absent.

Not only by the standards of the prescriptive literature but also by the standards of then-recent Asian democratizations did the Indonesians proceed in a nonparticipatory way. In South Korea, the reform process began in 1987 with legislative adoption of a new constitution, ratified the same year in a national referendum, and followed by free elections.[31] In the Philippines, Corazon Aquino, victorious in the 1986 election, appointed a commission, half of its members drawn from civil society, to draft a new constitution, which was then ratified in short order by a referendum.[32] The Thai democratic constitution of 1997 was produced by an indirectly elected Constitution Drafting Committee consisting of a majority of provincial representatives and a minority of experts and former public officials. Had the draft been rejected by the National Assembly, it would have been submitted to a referendum, but the Assembly approved it, and elections followed.[33] As these cases show, sometimes elections precede reforms, sometimes not; sometimes constitution drafters are elected, sometimes not; sometimes a referendum is mandatory, sometimes not. All that can be said definitively is that public approval at some stage of constitutional reform is commonly seen as a hallmark of legitimacy. These was no such explicit public approval process in Indonesia.

The process that was followed in Indonesia had a considerable impact on the institutions that were adopted. It would be tedious to recount all the ways in which a constitutional commission or convention might have

[28] John M. Carey, "Does It Matter How a Constitution Is Created?" unpublished paper, Dartmouth College, March 26, 2009, pp. 23–24.

[29] Ibid., p. 23.

[30] Ibid., p. 24.

[31] Han Sung-Joo, "South Korea in 1987: The Politics of Democratization," *Asian Survey*, vol. 28, no. 1 (January 1988), pp. 52–61.

[32] Kent Eaton, "Restoration or Transformation? 'Trapos' versus NGOs in the Democratization of the Philippines," *Journal of Asian Studies*, vol. 62, no. 2 (May 2003), pp. 469–96; Mark R. Thompson, "Off the Endangered List: Philippine Democratization in Comparative Perspective," *Comparative Politics*, vol. 28, no. 2 (January 1996), pp. 179–205.

[33] Suchit Bunbongkarn, "Thailand's Successful Reform," *Journal of Democracy*, vol. 10, no. 4 (October 1999), pp. 54–68. The 1997 constitution was overthrown in a coup in 2006 and then superseded by a less democratic document in 2007.

chosen different institutions. When decisions are made incrementally, path dependence becomes important. The result was that those who revised the Indonesian constitution made some institutional choices at variance with more or less orthodox advice.

There is much room for debate about the merits of the various injunctions violated by the Indonesian reform process. Constitution making before new elections may be a sound sequence if the sitting government has enough legitimacy to create the constitutional process, but perhaps not otherwise. Constitution drafting outside the legislature may avoid the conflicts of interest inherent in constitution drafting inside the legislature, but a constitution that fails to cater for the interests of sitting politicians is at risk of being rejected.[34] A thoroughly participatory process elides the problem of rational ignorance[35] – that is, the disincentives that exist for citizens to become sufficiently expert in constitutional issues to debate them; it emphasizes public deliberation rather than the negotiation and accommodation of disparate political interests;[36] and it assumes that representative democracy is inadequate to the task of constitution making. Similarly, an intense, single-shot process of constitution drafting may allow for a coherent design that is less likely in an incremental process, with its multiple decision points, but the adoptability of coherent designs is, in any event, often problematic.[37] If so, the costs of incrementalism may be exaggerated.

In any case, the Indonesian decision makers chose their own path. That does not imply that the standard prescriptions are wrong, though they might have been wrong for Indonesia, but that there are multiple paths to constitutional democracy. Indonesia's path, I shall suggest later, may have applicability beyond the Indonesian case; it may be especially apt for a certain class of society with a certain configuration of political differences.

[34] This is the Kenyan story in 2005. See Cottrell and Ghai, "Constitution Making and Democratization in Kenya," pp. 13–15, 17.

[35] See, e.g., Guido Pincione and Fernando R. Tesón, *Rational Choice and Democratic Deliberation: A Theory of Discourse Failure* (New York: Cambridge University Press, 2006).

[36] See Nathan J. Brown, "Reason, Interest, Rationality, and Passion in Constitution Drafting," *Perspectives on Politics*, vol. 6, no. 4 (December 2008), pp. 675–89.

[37] See Donald L. Horowitz, "Constitutional Design: Proposals versus Processes," in Andrew Reynolds, ed., *The Architecture of Democracy* (Oxford: Oxford University Press, 2002), pp. 15–36; Horowitz, "Constitutional Design: An Oxymoron?" *NOMOS*, vol. 42 (2000), pp. 253–84.

AN IMPROBABLE DEMOCRACY

As of the mid-1990s, Indonesia was a very unpromising candidate for democratization. Colonial rule, particularly in the decades immediately before independence, had provided little training in democratic practice. In the Netherlands East Indies, there had been elections at the local level, especially in Java, since the early twentieth century. Local and regional councils indirectly elected members of the Volksraad, or People's Council, a mainly advisory body. With the defeat of Dutch rule in the Indies, however, the Japanese began to work with leaders of the Indonesian nationalist movement, some of whom absorbed Japanese imperial ideas rather than Western democratic ones.

After the war, the Dutch tried till the end to maintain Indonesia as a dependency, although they became more flexible about political participation. Forced to fight for their independence, Indonesian nationalists had failed to develop democratic institutions, and the Japanese occupation had provided no such encouragement.

The Dutch noticed the deficiency and sought to capitalize on it. In an effort to challenge the emerging republic in the late 1940s, the Dutch organized about 30 district and municipal council elections that were to be the prelude to greater freedom in a Dutch-colonial Indonesia. By cultivating local notables and rajas, the Dutch had hoped to provide a counterpoint to the institutions in force in territory controlled by the nationalists, vulnerable as they were to accusations of a democratic deficit and, given the skewed composition of the independence movement's top leadership, to accusations of Javanese and Minangkabau ethnic domination.[38] But the Dutch appeal to local sensibilities was "tainted with an air of ethnic separatism."[39] In any case, some of the elections were indirect – that is, merely to choose an electoral college to choose council members – and they provided no serious opportunity for governance responsibility. The contrast with India, where seriously representative institutions had begun to operate as early as 1936,[40] is striking.

[38] For Dutch policy during this period, I am indebted to Robert Cribb, "Democracy, Self-Determination and the Indonesian Revolution," in Jane Drakard and John Legge, eds., *Indonesian Independence Fifty Years On, 1945–1995*, Annual Indonesia Lecture Series, no. 20 (Clayton, Victoria: Monash Asia Institute, 1996), pp. 1–12. I am also grateful for a helpful conversation with Robert Cribb. The interpretation is mine alone.

[39] Ibid., p. 11.

[40] Among many sources, see Hugh Tinker, *India and Pakistan: A Political Analysis*, rev. ed. (New York: Praeger, 1967), pp. 24–26.

In 1945, the new republic adopted its first constitution, intended to be temporary. It was written in a very short span of time, in emergency conditions, and with the most limited participation. Its principal author was an admirer of Japanese integralism, which assumed the spiritual identity of the ruler and the ruled, and he was apparently also influenced by Nazi ideas to the same effect.[41] Not surprisingly, the resulting document contained few well-specified democratic rules of the game. Promises to redraft within six months what was referred to as "a lightning constitution"[42] were unfulfilled for years.

There were certainly democrats in the Indonesian independence movement,[43] but Sukarno, the charismatic leader who emerged at its head, had neither democratic training nor inclinations. Moreover, the armed forces, emerging from training by the Japanese and war with the Dutch, managed to secure a place in the polity that was incompatible with democratic accountability. In the more than a half century from 1945 to 1998, Indonesia enjoyed exactly one free national election and very few years of parliamentary democracy. Sukarno's regime was characterized by economic mismanagement, an unstable balance of political forces, armed rebellions, and adventurism in foreign policy, including the threat of force to acquire Irian Jaya (West New Guinea) from the Dutch and a policy of confrontation vis-à-vis Malaysia. These were inauspicious beginnings.[44]

The overthrow of Sukarno in 1965 unleashed more than two years of mass violence, with hundreds of thousands killed.[45] Suharto's regime, which lasted more than three decades, ended the old balance of forces over which Sukarno had presided, replacing it with military predominance and developing an ideology of *dwifungsi* – two functions, military and civil – for the armed forces. The armed forces permeated the civilian structures that supported the authoritarian regime, on the explicit assumption that the army, having sprung from the people in the anticolonial

[41] Tim Lindsey, "Indonesia: Devaluing Asian Values, Rewriting Rule of Law," in Randall Peerenboom, ed., *Asian Discourses on Rule of Law* (London: Routledge, 2003), pp. 286–323, at p. 291; Adnan Buyung Nasution, *The Aspiration for Constitutional Government in Indonesia* (The Hague: Gegevens Koninklijke Bibliotheek, 1992), pp. 60–61, 90–103.

[42] Nasution, *The Aspiration for Constitutional Government in Indonesia*, p. 355.

[43] Most notably, Sutan Sjahrir and Mohammad Hatta.

[44] For general surveys, see Ailsa Zainu'ddin, *A Short History of Indonesia* (New York: Praeger, 1970); Legge, *Sukarno*.

[45] See Robert Cribb, ed., *The Indonesian Killings, 1965–66: Studies from Java and Bali* (Clayton, Victoria, Australia: Monash University Papers on Southeast Asia, 1990).

struggle, was not really severable from it; and the material interests of the military in the civilian economy made its disengagement from politics improbable.

The Suharto regime conducted elections, but with a tame opposition and more or less foreordained electoral results. The growth of civil society was limited. As the decades passed, the regime became more personalistic and more nepotistic, more suffused with obvious corruption and with military involvement in violence against civilians and in human rights abuses.

The forces that might have favored democracy were themselves divided among secular nationalists, modernist Muslims, and traditionalist Muslims. Personal antipathy among some of the leaders of these three streams was great, and some of them were compromised by their collaboration with the Suharto regime. So unlikely did the end of the regime appear that root-and-branch opposition seemed not merely unwise but dangerous. Suharto's skillful use of co-optation and coercion had left the opposition weak. Some parts of it were loosely connected to the regime and prone to compromise; others were fragmented, suppressed, or pushed to the sidelines. No one had planned for a replacement of the regime. There was simply no "credible democratic alternative at the point of the regime's collapse."[46] The crowds in the streets were demanding Suharto's head, and some in the armed forces were hoping to enforce a crackdown on the opposition, including setting loose gangs that might unleash widespread anti-opposition violence.[47]

Outsiders, too, foresaw no significant chance of democratic change. In Samuel P. Huntington's *The Third Wave*, Indonesia's prospects get barely a mention;[48] in 1984, Huntington had remarked that states with Muslim populations had little chance of democratizing.[49] Larry Diamond, writing in 1996, declared that Indonesia showed "little or no prospect of democracy in the near term."[50] Stephan Haggard and Robert R. Kaufman pointed out that fragmented party systems made it difficult to coordinate

[46] Aspinall, *Opposing Suharto*, p. 240.

[47] Marcus Mietzner, "The Politics of Military Reform in Post-Suharto Indonesia: Elite Conflict, Nationalism, and Institutional Resistance," *East-West Center Policy Studies*, no. 23, Washington, DC, 2006, p. 7.

[48] Samuel P. Huntington, *The Third Wave: Democratization in the Late Twentieth Century* (Norman: University of Oklahoma Press, 1991), p. 111.

[49] Samuel P. Huntington, "Will More Countries Become Democratic?" *Political Science Quarterly*, vol. 99, no. 2 (Summer 1984), pp. 193–218, at p. 216.

[50] Larry Diamond, "Is the Third Wave Over?" *Journal of Democracy*, vol. 7, no. 3 (July 1996), pp. 20–37, at pp. 30–31.

policy, as did political polarization, and new democracies born in a crisis had a difficult time institutionalizing their authority.[51] Indonesia partook, it seemed, of all of these conditions. David Martin Jones asserted that Indonesia's middle class, elsewhere the bulwark of democratic development,[52] was docile, dependent on the state, and ambivalent about democracy.[53] And, as an experienced and subtle analyst wrote in 1996, "the army's monopoly of political resources makes unlikely any major changes in New Order institutions in the immediate post-Suharto period."[54]

There were, to be sure, straws in the wind. As the 1990s wore on, Suharto's pseudo-parliament received increasing numbers of delegations wishing to express grievances. After the 1997 elections, some of the new legislators of Suharto's party, Golkar, were favorable to reform. In the 1997–98 period, some legislators began to state their opposition to Suharto, and a formerly tame opposition party proposed term limits for the president, a proposal tantamount to a demand that the three-decade incumbent step down.[55] Indonesia was, as Anders Uhlin foresaw, in "a pretransition phase,"[56] but little in its circumstances, historical or contemporary, would have led most knowledgeable observers to agree with his prescient assessment that democracy was possible after Suharto or that liberalization would be the first stage of the transition.[57] The pessimists were not wrong about the probabilities. Although Indonesia was not wholly without advantages in the quest for democracy,[58] democratic development was not the most likely course.

[51] Haggard and Kaufman, *The Political Economy of Democratic Transitions*, pp. 26, 170, 368.

[52] See Seymour Martin Lipset, *Political Man: The Social Basis of Politics* (New York: Anchor Books, 1963); Adam Przeworski, *Democracy and the Market* (Cambridge: Cambridge University Press, 1992).

[53] David Martin Jones, "Democratization, Civil Society, and Illiberal Middle Class Culture in Pacific Asia," *Comparative Politics*, vol. 30, no. 2 (January 1998), pp. 147–70, at pp. 148, 155.

[54] Liddle, *Leadership and Culture in Indonesian Politics*, p. 8.

[55] Patrick Ziegenhain, *The Indonesian Parliament and Democratization* (Singapore: Institute of Southeast Asian Studies, 2008), pp. 53–64.

[56] Anders Uhlin, *Indonesia and the "Third Wave of Democratization"* (New York: St. Martin's Press, 1997), pp. 155–64.

[57] Ibid., p. 156.

[58] As we have seen, Indonesia had controlled political parties and unfree elections during Suharto's New Order period; both of these appear to increase prospects for democracy above and beyond what they might be without such conditions. See, e.g., Staffan I. Lindberg, ed., *Democratization by Elections: A New Mode of Transition* (Baltimore:

In spite of these unpromising conditions, Indonesia was transformed into a serious, if imperfect, democracy. As mentioned, free elections were held in 1999, again in 2004, and then in 2009. In the 2004 election, an incumbent president was turned out of office and accepted defeat. Even before all the constitutional changes were completed, reformed institutions had begun to function. Power was dispersed vertically, through a massive decentralization, and horizontally, through the creation of a separately elected presidency and a strong constitutional court. Executives were held accountable in the legislature, and legislative power was limited by specified rules. Minorities, most notably the Chinese, were freed of former disabilities, and a vigorous press and NGO sector began to flourish. There are many qualifications and exceptions to these developments – such as a poorly functioning legal system, armed forces only partially disciplined by civilian control, and restraints in certain areas on freedom of religious practice – and some democratic developments may yet be reversible. But if democracy consists of governmental accountability through regular, free, and fair elections, combined with restraints on executive power and guarantees of individual freedom and political pluralism, then Indonesia has met these conditions.

THE LOGIC OF A TRANSITION

That Indonesia had managed to travel this far in a matter of years in the face of exceedingly unpromising circumstances was a major surprise. Since I have suggested that the course chosen soon after the fall of Suharto was, in significant measure, responsible for this surprise, it is necessary to inquire in detail into the process that was chosen and to ask why things

Johns Hopkins University Press, 2009); Michelle Kuenzi and Gina Lambright, "Party System Institutionalization in 30 African Countries," *Party Politics*, vol. 7, no. 4 (July 2001), pp. 437–68. Within the extraparliamentary opposition, Indonesia had several legitimate leaders of segmental social and political organizations, whose participation in the transition helped quiet the crowds on the streets. Indonesia also had a vibrant press that could be revived once authoritarian controls were lifted, and it came back to life quickly after May 1998. Perhaps above all, despite ethnic and religious differences, Indonesians shared an overarching national identity that had been cultivated during the struggle for independence. That identity was not equally strong everywhere: it was weakest in East Timor, which had been incorporated by invasion in 1975 and became independent after a 1999 referendum; it was highly variable in eastern Indonesia and in Papua; and it was subject to periodic separatist strains in other parts of the archipelago. Nevertheless, a general consensus about the scope of the country's territory and about belonging to one nation certainly characterized Indonesia during most of the independence period.

were done as they were, in the sequence in which they were done, and in the manner in which they were done. In other words, it is necessary to explicate the logic of the process for the participants.

The institutions that emerged also require explanation. Those institutions were by no means foreordained. A prominent characteristic of the constitutional reform process is that, while it had a strong flavor of continuity owing to the use of the former regime's bodies, procedures, and some of its personnel, at the end of the day the constitution was drastically revised. The Indonesian process produced a set of institutions, some of which differed markedly at the end from those that were deemed most appropriate by key participants at the beginning.

Among the actors whose preferences and behavior must be taken into account are the armed forces. They were mainly passive, and they shaped very little outside their own sphere of corporate concern, although segments of the military were bemused by or resentful of some decisions that were made. Yet the armed forces were an important potential veto group. That they did not exercise any veto may cynically be put down to their ability to preserve their core interests in the face of sweeping reform, but there is more to it than that. The structure of relations within the military and the nature of the constitutional reform process were also important causes of military acquiescence.

An examination of the democratic process that emerged can scarcely avoid the consequences of the mix of institutions the reformers adopted. While it may not be an optimal mix, it is, on the whole, a workable one, and it has, as suggested earlier, had a generally benign influence on the social cleavages that might otherwise threaten Indonesia's democratic stability.

These three subjects – the process and its rationale, the institutions produced, and the consequences of both the process and the particular configuration of institutions – form the core of the chapters that follow.

THE HIDDEN HAND OF HISTORY: FOUR AVERSIVE MEMORIES

One additional set of causal conditions makes an appearance periodically: the past against which the new political leadership worked. In concentrating on current conditions, on strategy and choice, it would be easy to miss the important constraining role of history.[59] Yet both the methods of

[59] For this theme, see Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton: Princeton University Press, 2004).

constitutional reform and the institutions chosen along the way reflected the main actors' understanding of Indonesian history and its previous democratic failures.

Each of four main recollections pertained to events that could, if they recurred, thwart the quest for constitutional democracy: (1) mass violence, (2) territorial separatism, (3) deliberative deadlock, and (4) party fragmentation and concomitant legislative dysfunction. The history that colored the responses of the early post-Suharto period consisted of events that had occurred in the 1960s and, even more powerfully, those that had transpired during Indonesia's earlier democratic interlude, in the 1950s. In some cases, historical events were merely in the background, barely called to consciousness. In others, they were so well known they did not need to be mentioned. All were important, and one became a recurrent concern. A preview of each is warranted.

All critical junctures in Indonesia had been preceded or accompanied by violence.[60] By far the worst episodes had occurred at the last regime change, more than 30 years earlier, when there had been massive and protracted killing that cost at least 600,000 lives. The decision to proceed with change intramurally and gradually was informed by a desire to avert a repetition of that violence. In the 1990s and the early 2000s, before and after the fall of Suharto, violence in Jakarta and around the archipelago killed about 19,000 people.[61] As we shall see, alternatives to the mode of proceeding chosen by Indonesian political leaders appeared to risk polarization and much more serious violence.

Some of the violence of the 1990s and early 2000s was reminiscent of the violence of the 1950s, when reactions to what was seen as excessive centralization had produced armed rebellions. Some of the 1950s rebellions were colored by anti-Javanese sentiment, some were aimed merely at carving out particular areas of ethnic autonomy, and others reflected resentment of Jakarta's economic regulations that had adverse effects in certain regions.[62] A revolt began in Aceh in 1953, and demands for regional autonomy and the removal of ethnically alien central government functionaries had spread by 1956. In Sulawesi and Sumatra, there was

[60] Jacques Bertrand, "Ethnic Conflicts in Indonesia: National Models, Critical Junctures, and the Timing of Violence," *Journal of East Asian Studies*, vol. 8, no. 3 (September–December 2008), pp. 425–49.

[61] Gerry van Klinken, *Communal Violence and Democratization in Indonesia: Small Town Wars* (London: Routledge, 2007), p. 4.

[62] This period is well treated in Herbert Feith, *The Decline of Constitutional Democracy in Indonesia* (Ithaca: Cornell University Press, 1962), pp. 487–593.

outright defiance of the central government; and, in the latter, regional military coups took place in the same year. In response, the central government promised a new regime of regional autonomy, and several parties in Jakarta floated the idea of a second house to represent the regions.

Despite these initiatives, the violence grew. In 1957, there were military revolts in eastern Indonesia, and by the following year Sumatra, North Maluku, and North Sulawesi were in armed defiance of the central government. These revolts were put down by force during the first half of 1958, but by then considerable damage had been done to confidence in parliamentary institutions at the center. The rebellions facilitated Sukarno's termination of Indonesia's democratic regime and the substitution of his regime of "Guided Democracy" in 1959. Parliament was dissolved, new elections repeatedly postponed. The successful repression of the revolts by the army solidified the position of the military as the defender of the state, which in turn contributed to the strong place occupied by the armed forces throughout Suharto's three-decade-long period of rule.

The 1990s were also a time of regional discontent and separatist insurgencies, real and threatened. To alleviate grievances outside of Java, the first post-Suharto government embarked on an extensive decentralization project. This decision was not undertaken without a certain amount of ambivalence derived from still other historical memories, these from the fight against the Dutch, who had used decentralized authorities and the creation of a federal state as weapons against the new republic in efforts to resume colonial control over Indonesia after World War II. But, after the fall of Suharto, the fear of separatism was strong. There were several sites of localized but extensive ethnic violence, some reminiscent of the 1950s.[63] Devolution in 1999 and after was seen as a way to preserve national unity without undue resort to force and, therefore, without strengthening the hand of the armed forces against a democratic dispensation.

There was more, however, in the minds of reformers than merely averting the violence of the 1950s or of 1965–67. The constitutional exercise itself had antecedents that informed the choices made following the end of the Suharto regime. In the 1950s, a constituent assembly had been charged with drafting a constitution. That body, the Konstituante, consisted of 544 members, 514 of them chosen in a special election in 1955 that drew 90-percent voter participation. The 1950 constitution, a second temporary document, had provided for the Konstituante and required that

[63] For the analogous events of the 1950s, see ibid.

government ratify "immediately" any new constitution drafted and approved by a two-thirds vote of the assembly's members.[64]

The Konstituante sat from 1956 to 1959 but failed to agree on a constitution. The received wisdom, handed down through the decades, was that the deadlock that afflicted that body had made its dissolution by Sukarno unavoidable.[65] Certainly, this was the view of key reformers after Suharto's fall. The Konstituante was seen as "a traumatizing experience for Indonesia."[66] The experience was, said a leading constitutional drafter, "imprinted on my mind."[67] The imprint led him to conclude that it would be undesirable to produce a wholly new constitution, for that would involve debating basic worldviews.[68] Indeed, for some, the Konstituante experience gave rise to an initial position that it was best not to try to change the 1945 constitution at all, for fear that two equal blocs might emerge and then the army would have the deciding vote.[69] Although that was a minority view, and it changed over time, it was thought by some key officials that giving drafting authority to a separately elected assembly risked a repeat of what had happened in the 1950s – polarization, deadlock, and thus justification for a return to authoritarianism.[70] Articulate voices in civil society thought otherwise, but at least some important insiders entertained no doubt that assigning the constitutional change process to a constituent assembly would jeopardize the constitutional reform enterprise.

Remembered history is not necessarily the same as history itself. Adnan Buyung Nasution has studied the Konstituante in great detail and concluded that it was neither permanently deadlocked nor unavoidably dissolved. Developments outside the assembly, rather than inside, sealed its fate. By the time it was dissolved, the Konstituante had agreed on 90 percent of the constitution and failed to reach agreement on only two important points. One was whether there would be a unicameral or bicameral legislature, an issue that divided centralists from proponents of greater Outer Island autonomy. The other was the Jakarta Charter, the addition of a phrase that would qualify the strictly secular character of the

[64] Provisional Constitution of the Republic of Indonesia (1950), arts. 134, 137.
[65] Nasution, *The Aspiration for Constitutional Government in Indonesia*, pp. 56–57, 255.
[66] F.N. 3:60 (a person centrally involved in the post-1998 reform process).
[67] F.N. 3:64.
[68] The same idea was expressed by others. F.N. 3:69, 3:73.
[69] F.N. 1:14 (a very close participant-observer of the reform process). There were, at the time, 55 armed forces representatives in the body charged with amending the 1945 constitution.
[70] F.N. 3:60.

state by adding an obligation for Muslims to observe Islamic law.[71] Neither side could get the requisite two-thirds majority on either point. Contrary to the deadlock view, however, Nasution finds that the two blocs could still compromise and were aiming at a deadline for finishing work in early 1960, but were prevented from producing their final draft by Sukarno.[72]

The 1950 constitution had created a parliamentary system, and that had made Sukarno a relatively powerless president. Already in 1957 he had announced his intention to move to Guided Democracy, and the army had also been pressuring him to return to the 1945 constitution, which could be construed to allow legislative representation of the army as a "functional group."[73] For Sukarno, the 1945 constitution had the advantage of being presidential rather than parliamentary.

This maneuvering was part of a growing conflict between the president and the army, on one side, and the political parties and the Konstituante, on the other. The former wanted a more authoritarian regime, and Sukarno had believed for some time that Western democracy was unsuitable for Indonesia.[74] In 1959, the Konstituante overwhelmingly rejected the notion of Guided Democracy and a government proposal to return to the 1945 constitution, which many members regarded as undemocratic, whereupon Sukarno, by decree, terminated the assembly.[75] The 1945 constitution was restored.

Nasution concludes that external pressure, initially from the army, strengthened by its success in suppressing the regional rebellions, and then from Sukarno himself, prevented the Konstituante from gaining the time needed to produce a new constitution. Whether the Konstituante could ultimately have produced a new constitution, the conventional version passed down to the political elite through the decades was that

[71] Nasution, *The Aspiration for Constitutional Government in Indonesia*, pp. 329–31. The Jakarta Charter is an issue with a long history in Indonesia, to be discussed in Chapter 4, below.

[72] Ibid., pp. 346–51, 397.

[73] Ibid., pp. 294–97. Whereas the 1950 constitution required that all members of parliament except representatives of certain minority groups be elected (1950 Constitution of Indonesia, arts. 56–58), the 1945 constitution was more permissive; it allowed the structure of the legislature to be "prescribed by statute." 1945 Constitution of Indonesia, art. 19(1).

[74] Nasution, *The Aspiration for Constitutional Government in Indonesia*, pp. 44–45, 296.

[75] Ibid., pp. 46–47, 366–68. Many members also disapproved of the inclusion of unelected functional-group representatives in the legislature. Ibid., pp. 374–75.

the Konstituante was hopelessly deadlocked around the enduringly dangerous issue of the role of Islam in the state.

In the post-Suharto constitutional proceedings, there were several issues that could produce stalemated debates. Among these were the revival of the Jakarta Charter proposal, the place of the military, possible direct election of the president, and even the extent to which the 1945 constitution should be subject to fundamental revision at all. Stalemate was very much on the minds of the legislature elected in 1999, and the received wisdom about the Konstituante's failure was in the background.

Keeping the constitutional reform process in-house would help avert a repetition of that result. A process conducted by a legislative body allowed for flexibility in producing a new constitution. A sitting house with multiple tasks on its agenda could put out its constitutional changes in increments, as each piece was agreed, leaving for later resolution matters not yet agreed, even matters on which there was deep division. Deadlock on a constitutional matter would not necessarily bring all of a continuing body's deliberations to a halt, thereby inviting intervention by extraconstitutional forces. Momentum could be kept up, even if progress were slow. The drafting body did not sit continually, but in annual sessions.[76] Unlike the specially convened assembly that sat in the 1950s, it controlled the authoritative – although not the public – perception of success or failure.

Unlike the Konstituante, the post-Suharto constitutional reformers proceeded by consensus, rather than by voting. Deadlock in the Konstituante had been signaled by taking votes on contested issues on which neither side could muster the requisite two-thirds of the body. Two-thirds were also required for the post-1999 changes, but proceeding by consensus meant there were no votes that could miss the two-thirds mark, so no inference of stalemate could be drawn.

Needless to say, not taking votes is not the same as not knowing where the votes are and being able to count them. Officially recognized party factions gave reliable and detailed indications of who supported what at any given moment, hence what was feasible to enact and what needed to be postponed because of disagreement.

[76] The 1945 constitution required only that the legislature meet at least once annually and that the supralegislative body with authority to amend the constitution meet at least once every five years, which is what it did under Suharto. 1945 Constitution of Indonesia, arts. 2(2), 19(2). After Suharto's fall, however, the supralegislative body began to meet in annual sessions and occasionally more often, in special sessions.

As earlier experience affected the choice of method and forum, so did it influence the political institutions that were crafted to produce a new democracy. These were designed with an eye on the failings of the earlier version of Indonesian democracy – and not just its overcentralization. After 1998, there was a serious effort, in several iterations, to avert a problem manifested from 1955 to 1959, when the fragmentation of the legislature had been used to delegitimize democracy and justify Sukarno's usurpation of political power.

There was a strong sense after the 1955 elections that there were too many political parties, that parties were too closely identified with particular social segments, and that there were too many changes of government from 1955 to 1959.[77] There is a good case to be made that the 1955 parliament was not so badly fragmented and that the cabinet was not especially ineffective.[78] But under pressure from the army, from regional movements, from Sukarno, and from the then-powerful Communist party, cabinet government proved fragile, and the "political public"[79] saw it as a failure. A consuming desire for order and harmony, rather than interparty strife, made it easy for opponents of democracy to undermine parliamentary institutions.

Keenly aware of what they, too, saw as a critical failing of the previous institutions, the institution builders of the first decade after Suharto's fall acted to design and redesign the regulation of parties and elections to avoid the danger of a hung legislature. Important conclusions were drawn from the 1955 elections and what followed them. First, there was an aversion to a parliamentary system. It was clear early in the post-1998 constitutional deliberations that there would be a presidential system, although unclear how the president would be chosen.[80] Second, there was a desire to limit the number of parties that would be likely to secure legislative representation. Third, there were recurrent efforts to shape the electoral system so as to avoid legislative fragmentation. Rare was the voice that embraced the virtues of

[77] See Feith, *The Decline of Constitutional Democracy in Indonesia*, pp. 464, 554, 574.

[78] I discuss the 1955 election in somewhat more detail in Chapter 3, below. On the cabinet, see ibid., pp. 551–52.

[79] Ibid., p. 553.

[80] F.N. 2:83, 2:101 (two members of PAH I, one from PDI-P, one from PPP). Because of recollections of "the parliamentary constitution of the 1950s," parliamentarism was "equated with weak and unstable government." Harold Crouch, *Political Reform in Indonesia after Soeharto* (Singapore: Institute of Southeast Asian Studies, 2010), p. 54.

multipartyism.[81] The reform proceedings were marked by something approaching an obsession to avoid repeating the parliamentary experience of the 1950s, which was seen as opening the door to dictatorship.[82]

In all of these ways, the intramural location, gradual method, and choice of institutions that characterized the reform process had abiding sources in unhappy prior political experience. History, as the major actors apprehended it, had a causal role.[83] We shall return to the influence of historical antecedents and memories at various points when they affected decision making. It would be facile, however, to attribute the decisions taken to historical determinism. Memories of the earlier failure of Indonesian democracy were acutely influential on some decisions, but these memories were mainly aversive: they suggested what to avoid, not precisely what to choose – although it is true that familiarity also had some hold on the constitution makers.[84] Likewise, what I have referred to as Indonesia's cleavage endowment imparted to the country's leaders a sense of how they ought to proceed in order to avoid persistent dissensus, but it did not necessarily dictate particular actions. The political leaders had their own goals. They wanted a set of institutions that would be recognizable as internationally legitimate. But even this goal did not govern the specifics of what they created. They also wished to pursue their self-interest and party

[81] An exception – but far from the halls of the legislature – was Rizal Panggabean, a political scientist rather than a politician, who remarked at a University of Indonesia seminar on "Amandemen UUD 1945" ("Amendment of the 1945 Constitution"), May 10–11, 2000, that multipartyism accommodates Indonesian pluralism and is not as inefficient as Suharto's New Order claimed it was. Panggabean opposed the bias against small parties.

[82] F.N. 1:123 (a PBB leader); 3:47 (a member of Tim Tujuh); 3:95–96 (a PDI-P leader).

[83] If some of the mysteries of the distinctive Indonesian constitutional process are attributable to the distinctive features of the Indonesian historical experience, this, in turn, bears on some of the mysteries of social science – in particular, why decision makers who seem to be similarly situated do not necessarily act in similar ways. It is possible that what seems to be their similar present situation is colored by appreciably different historical experience. For a cogent discussion of long-term causal chains as against cross-sectional approaches, see Pierson, *Politics in Time*.

[84] Not all historical experience was unequivocally negative. Although constitutional reformers abjured the federalism that was associated with Dutch efforts at recolonization, they understood that regional autonomy might mitigate Outer Island discontent, just as they had understood this in the 1950s. Similarly, the longstanding desire among Indonesian constitutionalists for judicial review and of others for a bicameral legislature had been expressed in the Konstituante, and both ideas found their way into the constitutional amendment process. The aversive role of history reflected a wish not to repeat the events or reintroduce the institutions thought to be responsible for the collapse of democracy, but it did not preclude the recrudescence of what had once been thought to be promising ideas.

interest, but on more than one occasion they misjudged, sometimes egregiously, what those might be.

Like other politicians, the Indonesian decision makers responded to the peculiar exigencies and constraints of their own time and place, in the light of problems that had manifested themselves at earlier times. The course they chose, especially its incremental character, imparted a particularly powerful element of path dependence to their decisions, as later decisions were colored by earlier decisions and looked very different from the way they would have looked had each been faced by itself. This feature of the lengthy Indonesian proceedings produced a configuration of institutions (and political results) rather different from what had been imagined – and, in some cases, even decided – at earlier stages.

2

Democratization Before Renovation

After the fall of Suharto in May 1998, there was international pressure to democratize the Indonesian regime and a good deal of international influence in the early stages of democratization, although by no means through what could be regarded as conventional channels. For a time, it seemed as if great latitude would be accorded to externally derived prescriptions, but before long the process was given over to domestic politics. As a result, the shape of what ultimately emerged in Indonesia was, in most respects, different from what had been contemplated by participants in the early stages of democratization. In the end, externally derived ideas yielded to internally constructed consensus. But the road to that result was a circuitous one, because Indonesia opted for elections first.

Following the resignation of Suharto, his vice president and successor, B. J. Habibie, appointed a team of academics and civil servants to draft new laws on political parties, elections, governmental structure, and devolution,[1] some of which were later greatly modified by the new-regime legislature. These statutes formed the basis for the elections held in 1999. The new legislature, consisting of members of some (partially reformed) old-regime parties, of former extraparliamentary parties, and of newly formed parties, then embarked on a multiyear process of fundamental constitutional change.

The result of this sequence was a lengthy process of democratic reconstruction. The process was intended to achieve legislative consensus, and it

[1] Actually, even Suharto had recognized the need to redraft the 1983 laws on the first three of these matters, and his home minister had constituted the team to work on them. Habibie reappointed the team and greatly raised the priority and urgency of its task.

was designed to reshape existing institutions rather than rebuild them from scratch. The 1945 constitution was heavily amended but not wholly abandoned. In the end, the changes were quite extensive, but they had a flavor of continuity about them. There was flirtation with a good many new, often foreign, ideas. Some of those were adopted. Yet, on the whole, there was greater comfort with institutions that were familiar, or that advantaged those who held the power of adoption, or that assuaged their apprehensions of danger based on their understanding of Indonesian history and social cleavages. If the sources of constitutional decision making in general are reason, passion, and interest,[2] in Indonesia they were reason, interest, familiarity, and fear.

These are not wellsprings of action necessarily conducive to a coherent product. Moreover, the gradual character of the Indonesian process meant that institutional designers did not end their deliberations where they had begun them. Some early products of their labors were abandoned and redesigned years later. Despite the willingness to rethink issues, the multiple sources of inspiration for the various changes at various times did not guarantee a particularly good fit of the parts with each other.

To say this is not to denigrate the achievements of the Indonesian decision makers. They were working against enormous obstacles: a constitution in need of drastic change but still enjoying significant support; a badly divided society; a country with a considerable history of violence confronted with the threat of serious conflagration; an array of accumulated problems, rather than just the constitutional problem; a civil society stunted by decades of authoritarian rule; and, at the outset, armed forces that might not have yielded peacefully to an overnight transformation. Under these circumstances, coherence of the resulting institutions was scarcely the only touchstone of success. The ability to accomplish the change peacefully was at least as important.

How and why constitutional change occurred in the sequence and manner that it did I shall explain as we proceed, and I shall explain, too, how and why this process, and the players and perspectives it advantaged, produced the results that it did. But, since I have emphasized the herculean task that confronted those players, I need first to depict in some detail the problems they confronted at the outset.

[2] Jon Elster, "Forces and Mechanisms in the Constitution-making Process," *Duke Law Journal*, vol. 45, no. 2 (November 1995), pp. 364–95, at pp. 376–77.

THE STARTING CONDITIONS

If constitutions are made in crisis, Indonesia fits the mold for constitutional change perfectly. The Asian economic crisis of 1997–98 hit Indonesia hard, and the instability that accompanied Suharto's departure exacerbated its impact. The political crisis was fast upon the economic crisis, and both played into ethnic and religious divisions. From the fall of 1997 to the middle of 1998, the currency lost 75 percent of its value as the economy contracted. Business confidence evaporated, large companies were insolvent or unable to service their debt, unemployment was rampant, malnutrition became common, and capital, especially Indonesian-Chinese capital, as well as Chinese managerial talent, had fled Indonesia in the wake of anti-Chinese attacks. There was great fear of a shortage of staples as well as suspicion that supply disruptions had been contrived to drive up prices. Scarcity led to looting, looting to arrests, and arrests to crowd confrontations with security forces.[3] And so the first steps toward a new regime had to be taken against a background of severe economic distress and unrest. Calm had to be restored, an economy that had increasingly been hijacked by Suharto's family and a narrow circle of cronies had to be liberalized, Chinese capital and expertise had to be coaxed back, and international lenders had to be mollified.

The 1997–98 period was filled with cross-currents. As the economic crisis grew, the Suharto family's extraordinary nepotism undermined the president's claim to rule. Yet he and his associates continued to resist the International Monetary Fund's painful prescriptions. During the preceding years, Suharto had begun to establish ties to the Muslim community (a secular man, he had made the pilgrimage to Mecca), forming an association of Muslim intellectuals and later taking as his vice president its leader, his longtime associate B. J. Habibie.[4] Suharto also had close relations to an array of important Chinese business magnates, but he had strengthened his connections to indigenous (*pribumi*) business interests as well. He and some military commanders blamed the economic crisis on Indonesian-Chinese business interests, just as anti-Chinese violence spread across the archipelago. *Pribumi* businesspeople began a scramble among

[3] Kees Van Dijk, *A Country in Despair: Indonesia Between 1997 and 2000* (Leiden: KITLV Press, 2001), pp. 289–98.

[4] Nadirsyah Hosen, *Shari'a and Constitutional Reform in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2007).

themselves to take over sectors in which Chinese business had dominated.[5] The regime was not without support, despite the financial chaos.

At the same time, there were further suggestions of the regime's continuing strength, and there were reforms that presaged some of those that were to follow Suharto's downfall. In the 1997 elections, Golkar, the acronym for *golongan karya* (functional groups), Suharto's favored political vehicle, achieved its best result ever in legislative elections, winning 74.5 percent of the vote against the only two parties permitted to run against Golkar, albeit under conditions that disfavored them, as well as a boycott promoted by one of the regime's opponents. As late as March 1998, Suharto was reelected president by the highest legislative body. It is indicative of how quickly events cascaded in the following two months that all party factions in the legislature had proposed him for president in March.[6]

There were signs of modest liberalization before Suharto's fall. Military representation in the legislature had been reduced from 100 seats to 75, out of a total house of 500. The legislature became a bit more independent and critical of government policy. Legislators were unhappy to have in their midst Suharto's handpicked supporters and relatives. Candidates newly elected in 1997, many of them Muslims, were opposed to Suharto's unchecked power. In February 1998, for the first time, there was a two-person contest within Golkar for indirect election of the vice president, although, of course, Habibie, preferred by Suharto, won.[7] These few changes were certainly insufficient to save Suharto, but they may have provided a little extra confidence to legislators, when the time came, that they could do the job of *reformasi* that was being demanded.

In mid-May, students occupied the parliament building. The next day, legislative leaders invited extraparliamentary reform politicians in for a discussion. Finally, a divided Golkar voted (160–125) to demand Suharto's resignation. Within days, he complied.[8]

[5] Stefan Eklöf, "Politics, Business, and Democratization in Indonesia," in Edmund Terence Gomez, ed., *Political Business in East Asia* (London: Routledge, 2002), pp. 216–49, at pp. 223–30.

[6] For some sources of the underlying brittleness of the regime in the 1990s, see Dan Slater, "Altering Authoritarianism: Institutional Complexity and Autocratic Agency in Indonesia," in James Mahoney and Kathleen Thelen, eds., *Explaining Institutional Change: Ambiguity, Agency, and Power* (Cambridge: Cambridge University Press, 2010), pp. 132–67.

[7] Patrick Ziegenhain, *The Indonesian Parliament and Democratization* (Singapore: Institute of Southeast Asian Studies, 2008), pp. 9, 48, 51, 53–59, 64, 71.

[8] For these events, see ibid., pp. 66–70.

During previous crises, Indonesia had known catastrophic violence. Independence had been won mainly in warfare, and soon after there was more: the Madiun incident begun by communists in 1948; the Darul Islam revolt by radical Islamists begun in the same year but not completely suppressed for a decade; the Maluku rebellion of 1950, after Jakarta had revoked local autonomy in Ambon and the surrounding islands; insurrections in various Outer Islands in the late 1950s; and, above all, the massive killings that followed Sukarno's downfall in 1965, some of which continued as late as 1967–68. These were cautionary tales.

By the time Suharto fell, there was separatist violence in East Timor, Aceh, and Irian Jaya, and the threat of it elsewhere.[9] There had been sporadic violence against the Chinese (and against Christians) in Java through the 1990s,[10] culminating in the death of more than 1,000 people (many of them looters caught in burning shopping malls) in one such incident in Jakarta in mid-May 1998, as well as serious, recurrent fighting between Christians and Muslims in Maluku and between Dayaks and Madurese in West Kalimantan from 1997 onward.[11] The killing had grown progressively more brutal as the 1990s wore on. Far from controlling the violence, segments of the armed forces were implicated in some episodes of it; some stood by and watched, and others refused orders to put the disorder down.[12]

No Indonesian politician could have neglected the prospect of massive violence or even civil war in a poorly controlled transition. The student movement that precipitated Suharto's resignation had, by early May 1998, begun to attract popular support for protests in all major cities.[13] In November 1998, a serious clash between Muslim and secular-nationalist forces outside parliament was narrowly averted. Against this background, political leaders avoided abrupt moves that could have produced yet another spasm of mass violence.[14]

[9] See generally Jacques Bertrand, *Nationalism and Ethnic Conflict in Indonesia* (Cambridge: Cambridge University Press, 2004).

[10] In 1996 and 1997 alone, 105 churches and other Christian religious buildings were destroyed or seriously damaged. Bernard Estrade, "Fragmenting Indonesia: A Nation's Survival in Doubt," *World Policy Journal*, vol. 15, no. 3 (Fall 1998), pp. 78–84 at p. 82.

[11] See Jamie Davidson, *From Rebellion to Riots: Collective Violence on Indonesian Borneo* (Madison: University of Wisconsin Press, 2008).

[12] Here I rely not only on the common understanding of the events but also on an account by a key official charged with investigating them. F.N. 1:33.

[13] *Far Eastern Economic Review*, May 14, 1998, pp. 21–24.

[14] A position consciously taken, according to a leading member of the committee working on the constitutional revision. F.N. 2:100–101.

Unlike Northern Ireland, or Cyprus, or Fiji, Indonesia is not divided by a single, overarching cleavage. More precisely, it is not bifurcated in that way continuously. Yet some of Indonesia's divisions threaten periodically to swamp the others, to bifurcate and polarize allegiances, and to send the whole country into profound disorder. As we shall see, Indonesian constitution makers neglected the prospects for bifurcation and instead focused principally on their fear of fragmentation. In this respect, they were driven by their understanding of their history.

That this was a plausible way of looking at things, albeit not the only way, can be seen from a cursory glance at Indonesia's multiple lines of division. A standard inventory might include conflicts between Java and the Outer Islands, some regions of which were inclined to separatism;[15] between one local ethnic group and another at an array of sites across the archipelago; between *pribumi* (indigenous Indonesians) and the small but economically influential Chinese minority;[16] between Muslims and non-Muslims (especially Christians, who comprise just under nine percent of the population, or the Hindu Balinese); between observant Muslims and the large, albeit declining, number of nominal or syncretistic Muslims, whose heterodox practices synthesize Islamic and pre-Islamic elements, including those derived from Hinduism and Buddhism; between activist, modernist Muslims who seek a more public role for Islam in the state and society and those traditionalist Muslims and other modernists who are content to emphasize religious learning and observance and are cautious about official connections linking religion and state in a pluralistic society;[17] and, finally, between committed democrats seeking a civilian regime and

[15] Separatism of varying intensity could be found among the people of Aceh at the northern tip of Sumatra, Riau in east Sumatra, and Irian Jaya (West Papua) in New Guinea. Nonseparatist intergroup violence had occurred in recent years between Dayaks (and Malays) and Madurese in West Kalimantan, between Christians and Muslims in Maluku, central Sulawesi, and Lombok, and between Flores people and Batak in Batam.

[16] Leo Suryadinata, *The Chinese Minority in Indonesia* (Singapore: Chopmen Enterprises, 1978); Leo Suryadinata, "Chinese Politics in Post-Suharto Indonesia," *Asian Survey*, vol. 41, no. 3 (May 2001), pp. 502–24.

[17] For careful statements concerning religious cleavages, see Robert W. Hefner, "Public Islam and the Problem of Democratization," *Sociology of Religion*, vol. 62, no. 4 (Winter 2001), pp. 491–514; R. William Liddle and Saiful Mujani, "The Islamic Challenge to Democratic Consolidation in Indonesia," unpublished paper, Ohio State University, 2002. The modernist-traditionalist cleavage was reactivated by a number of fatwas issued by the Council of Indonesian Ulama concerning secularism, interfaith marriage, and apostasy that were attacked by the large traditionalist, relatively tolerant organization Nahdlatul Ulama. See *Straits Times* (Singapore), August 8, 2005, p. 10. A convenient introduction to Indonesian religious pluralism is presented in Marcus Mietzner, *Military Politics, Islam, and the State in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2009), pp. 68–75.

military officers and their supporters attempting to preserve a strong role for the armed forces in politics.[18] If, as it is said, the problem of the Balkan countries is that they produce more history than can be consumed locally, the problem of Indonesian constitutionalism is to cut a cloth adequate to cover all of its naked cleavages.[19]

There was reason for extra caution about these cleavages in the late 1990s, for their salience and intensity had been growing.[20] Suharto had been cultivating Muslim support, incorporating Muslims into the armed forces, the bureaucracy, and the cabinet. Nationalist army officers, concerned about the future of the secular state, were unhappy about these developments. Suharto's patronage of an organization of Muslim intellectuals, some of whose leaders were prominent Muslim modernists, raised apprehensions among traditionist Muslim leaders, who sensed that their opponents were stealing a march on them. At the same time, Suharto dealt with what he saw as a threat to his regime by deposing its potential leader, Megawati Sukarnoputri, as chair of the secular-nationalist parliamentary party that had been authorized by his regime. This action, in 1996, precipitated violent protests, which were repressed with considerable brutality. Conspicuously absent in remonstrations against the repression were Muslim forces, especially those from the modernist stream, who were still being patronized by Suharto. While there was a dimly felt residual sense that various groups might in the end form an opposition front against Suharto,[21] his tactics had sharpened their differences, thereby making the gaps between them more dangerous, just as separatist movements and ethnic clashes around the country had made interethnic and interreligious differences much sharper.

[18] See Salim Said, "President Abdurrahman Wahid and the Indonesian Military: The Short Honeymoon," paper presented at a conference on "Consolidating Indonesian Democracy," Ohio State University, May 11–13, 2001. The same paper also appeared in Said, *Militer Indonesia Dan Politik: Dulu, Kini, Dan Kelak* (Jakarta: Sinar Harapan, 2001), pp. 333–64.

[19] For two of the leaner general inventories, see Judith Bird, "Indonesia in 1998: The Pot Boils Over," *Asian Survey*, vol. 39, no. 1 (January–February 1999), pp. 27–37; R. William Liddle, "Indonesia," in Philip Shively, ed., *Comparative Governance* (New York: McGraw-Hill, 1995), pp. 262–63.

[20] See Yudi Latif, *Indonesian Muslim Intelligentsia and Power* (Singapore: Institute of Southeast Asian Studies, 2008), pp. 416–65; Edward Aspinall, *Opposing Suharto: Compromise, Resistance, and Regime Change in Indonesia* (Stanford: Stanford University Press, 2005), pp. 181–99.

[21] See Angus McIntyre, *The Indonesian Presidency: The Shift from Personal Toward Constitutional Rule* (Lanham, MD: Rowman & Littlefield, 2005), pp. 182–85, 188.

The saving grace of these divisions was their very multiplicity, so that not all of them were politically active at any one time, and their considerable fluidity, so that alignments among various membership categories could shift: what seemed like sharp lines at one time might blur at another. Likewise, party politics did not reflect these cleavages perfectly. A party with support mainly from modernist Muslims might be led by a traditionalist Muslim, to take one case, while another, mainly Islamic party could reach out for support from secular nationalists, to cite another concrete example.

At the outset, some parties aimed to bridge divisions, while others were more or less limited by their clientele. Secularists, syncretists, and religious minorities, united by their apprehensions about an Islamic political agenda, tended to gather together, albeit not always under the same party banner. A small Islamic party aspired to the mantle of Masjumi, a modernist movement first sponsored by the Japanese but later achieving electoral prominence in the post-colonial period. A competitor in the same modernist stream built support on a base of religious discussion groups (*usruh*) among university students and educated urbanites, while another was founded by the former leader of the large reformist organization Muhammadiyah, especially strong in the Outer Islands. A rival traditionalist party found the core of its constituents in rural Islamic schools (*pesantren*) run by influential *kiai*, teachers and preachers generally affiliated with Nahdlatul Ulama, an organization with deep roots in east and central Java. This was a pluralist universe.

The pluralism extended downward to reflect local differences. As far back as the early 1960s, finespun ethnic and religious distinctions were associated with party preferences. To take one well-documented case, in the Lower Simalungun area of North Sumatra, a Protestant party was the exclusive preserve of the North Tapanuli Batak, who had been Christianized by Dutch missionaries; Masjumi was identified solely with the South Tapanuli Batak, observant Muslims heavily influenced by modernist religious organizations; and the Nationalist and Communist parties were confined to the syncretist Javanese community.[22] Local politics today is similarly pluralist, if not so perfectly ascriptive.

There are persistent themes in party and ethno-religious juxtapositions, many of which go back more than a half century, some far into the Dutch

[22] R. William Liddle, "Ethnicity and Party Organization: Three East Sumatran Cases," in Claire Holt, ed., *Culture and Politics in Indonesia* (Ithaca: Cornell University Press, 1972), pp. 126–78.

colonial period. Not that intergroup conflict is uniform. Far from it. Even in the turbulent 1950s, parties strongly identified with one cultural stream or another managed to cooperate across lines of affinity in multiparty cabinets. Yet, on occasion, alliances can form and alignments can harden in ways that threaten the life of the country. This they did from 1965 to 1967, when the military and some Muslim groups hunted down alleged supporters of the Communist Party of Indonesia.[23] They nearly did again in November 1998, when students, mainly representing the secular-nationalist stream, marched on parliament to demand reform, an end to military involvement in politics, and the removal of Suharto's successor as president, B. J. Habibie. The students were met by army units and by Muslim vigilantes who had begun to see Habibie as an Islamic president under siege by secular and Christian forces. There were brutal lynchings and shootings, more than a dozen dead, eight of them killed by the security forces, and perhaps 500 injured. Jakarta was barely pulled back from the brink of a major bloodbath by a security cordon around parliament and some last-minute military-command diplomacy.[24] As the constitutional process began, Indonesia's cleavages seemed conducive to fragmentation, but, as I have indicated, at rare and dangerous moments they could also split the country down the middle. This was especially true of the differences between Java and the Javanese on one side and the Outer Islands and non-Javanese on the other side, but it was even more true of differences between Muslims and non-Muslims or secular nationalists.

Constitutional design for such a country is a daunting task. In Indonesia, the task was made more difficult by the atmosphere surrounding the transition. Suharto's New Order was a thoroughly corrupt, nepotistic government, ruled by an increasingly narrow circle of cronies associated with the palace. Understandably, even after Suharto left the scene, there was great public cynicism and suspicion of every movement ostensibly toward constitutionalism and democracy. The futility of the quest for a *Rechtsstaat* was a common theme. "Britannia rules the waves," goes the opening line of an old joke making the rounds of Jakarta's jaded elite in 1998. "Indonesia waives the rules."

Cynicism occasionally yielded to paranoia: the belief, for example, that communists, although thoroughly suppressed and murdered by Suharto's regime in the 1960s, were behind a series of burnings in East Java in early

[23] See Robert Cribb, ed., *The Indonesian Killings: Studies from Java and Bali* (Clayton, Victoria: Monash University Center for Southeast Asian Studies, 1990).

[24] Van Dijk, *A Country in Despair*, pp. 336–48.

2001, or that there was a Christian conspiracy to suppress Muslims, or, again, that all the violence in Indonesia was the work of shadowy figures left over from Suharto's New Order regime. The paranoia was reinforced by reliable disclosures that army units were indeed behind some of the violence of the late 1990s and that certain politicians, some of whom openly sponsored party-affiliated paramilitary units, were funding the bloody work of particularly vicious anti-Christian jihadists in Maluku, who were opposed by anti-Muslim Christian militias with allies in the army and police. The largely uncontrolled, if localized, violence of the late 1990s and the suspicion of hidden hands made the development of public trust in the process of constitutional renovation a herculean problem.

To compound the obstacles, the constitutional reformers were caught in an intellectual dilemma. On the one hand, Indonesia was emerging from a long period of unaccountable executive power. Suharto's rule went back to the gradual overthrow of Sukarno in 1965–67. Six years earlier, Sukarno had ended Indonesia's experiment with liberal democracy. So, by 1998, the country had experienced nearly four decades of authoritarian rule. Inside and outside the parliament buildings, this history gave rise to a serious allergy to concentrated power. On the other hand, the sense of living in a fragmented society, with formidable ethnic and religious divisions and with a substantial and continuing history of conflict around some of those divisions, produced great apprehensions, also fortified by historical recollections of hung parliaments, territorial disintegration, and perilous power vacuums. To shore up the center could produce dangerous reversion to authoritarianism and reactions from the periphery. To divide power at the center and to share it generously with the Outer Islands could produce political immobilism and even the breakup of the country. These apprehensions were in turn reinforced by the separatism, protracted civil violence on some islands, and threats from paramilitaries that I have described, compounded by the existence of a military so discredited, demoralized, and divided that it could not keep order but so fearful for Indonesian unity and so threatened with loss of its own prerogatives that it might prove dangerous to civilian rule.

The 1945 constitution remained in force as the renovation of institutions began. An idiosyncratic instrument,[25] the constitution was itself

[25] For surveys of the main provisions, see Tim Lindsey, "Indonesian Constitutional Reform: Muddling Towards Democracy," *Singapore Journal of International and Comparative Law*, vol. 6, no. 1 (December 2002), pp. 244–301; R. William Liddle, "A Useful Fiction: Democratic Legitimation in New Order Indonesia," in R. H. Taylor, ed., *The Politics of*

a source of instability. Drafted hastily under Japanese auspices, as mentioned in Chapter 1, by a scholar who saw the constitution as an expression of the national will rather than a set of guideposts and restraints, intended to be temporary, superseded by another constitution in 1950 but then revived by Sukarno in 1959, the 1945 constitution was utterly unsuitable to guide the exercise of power in a heterogeneous, democratic state.[26] The constitution created a unitary state in a vast archipelago that increasingly recoiled at power concentrated in Java. Described as a "*gado-gado* constitution"[27] – *gado-gado* is an Indonesian mixed salad – the document was fatally vague about the boundaries between the powers of one branch and those of another. It purported to place national sovereignty in a supralegislative body, the Majelis Permusyawaratan Rakyat (MPR, or People's Consultative Assembly),[28] containing many unelected members, and conferred on it power to choose the president and to lay out basic guidelines of state policy.[29] On the other hand, the indirectly elected president was said to hold "the power of government"[30] and also "the power to make statutes," but only "in agreement with" the legislature.[31] The supralegislative body with the power to choose the president also had the power to remove the president.[32] Many provisions made the constitution appear parliamentary, while others

Elections in Southeast Asia (Cambridge: Cambridge University Press, 1996), pp. 34–60; Blair King, "The Retention of a Paper Constitution and the Prospects for Democratic Consolidation in Indonesia," paper presented at a conference on "Consolidating Indonesian Democracy," Ohio State University, May 11–12, 2001, pp. 9–11; Kevin Evans, "The Presidency, National Assembly and Regional Parliaments," unpublished paper, Jakarta, August 12, 1999. Indonesians were well aware of the anomalies of the 1945 constitution. See, e.g., J. Soedjati Djiwandono, "What's Wrong with the Reform Process?" *Jakarta Post*, August 8, 2000.

[26] For the history of earlier aborted efforts to write a new constitution, see Denny Indrayana, "Indonesian Constitutional Reform 1999–2002: An Evaluation of Constitution-Making in Transition," Ph.D. dissertation, Melbourne University Faculty of Law, 2005, pp. 5–13.

[27] Jacob Tobing, quoted in Ziegenhain, *The Indonesian Parliament and Democratization*, p. 138. Referring to its ambivalent presidential-parliamentary character, an academic observer described the 1945 constitution as "neither male nor female." F.N. 2:20.

[28] The 1945 Constitution of the Republic of Indonesia (Jakarta: Department of Information, 1985), art. 1(2), read: "Sovereignty resides in the hands of the people and shall be exercised in full by the People's Consultative Assembly."

[29] Ibid., arts. 6(2) and 3, respectively. The constitution did not actually specify the method of selection of DPR or MPR members.

[30] Ibid., art. 4.

[31] Ibid., art. 5(1).

[32] The power of the supralegislative body, the MPR, to dismiss the president is not stated explicitly in the 1945 constitution, but in the Elucidation that follows it, section 6(III)(3), the president is said to be "subordinate to and responsible to the Majelis." In 1978, the MPR enacted a decree laying out the procedure by which it could remove a president. See

turned it in a presidential direction. The constitution was subjected to much criticism, but, in spite of its profound inadequacies, it was virtually sacred to important parts of the political spectrum because of its association with Indonesian independence.[33]

For many secular nationalists, military as well as civilian, the document was also untouchable because it was a secular constitution and the constitution of a unitary Indonesia. Efforts to insert a clause requiring Muslims to obey Islamic law had been repelled in 1945, and efforts to detach parts of the nation had also been rebuffed. For secular nationalists, fundamental constitutional change was a very risky course. Recall that a previous attempt to reach consensus on a new constitution had come to nought in the 1950s, when the most divisive issue in the Konstituante had been the role of Islam in the state.

The 1945 constitution had, nonetheless, been rendered irrelevant by Suharto, who, like Sukarno before him, had seized power behind its facade. Under Habibie, however, politicians began in earnest to play by its rules. Once they did, the anomalies of the constitution helped to cause a major crisis, a conflict between legislators and a later president that ended in his impeachment and removal. Along the way, there were smaller crises, some involving the legislature's power to interrogate the president, others the president's power to move army commanders and to discharge the chief of the national police. The old institutions provided little help in channelling power struggles that emerged while new institutions were being crafted, but they did provide basic powers of legislation and constitutional amendment that allowed the participants a way out of their conundrums.

THE PIECEMEAL RENOVATION

If, thus far, I have painted a picture of unrelieved gloom and doom, there is one respect in which political players mitigated the impact of the many unfavorable conditions arrayed before them. In spite of the dire circumstances facing the Indonesian people, which might have been thought

MPR Decree No. III of 1978. A copy of the decree is appended to a memorandum by Andrew Ellis, "What Happens Next? A Note on Constitutional and Legal Provisions on Conflict Between the Legislature and the President," National Democratic Institute [hereinafter NDI], Jakarta, February 5, 2001.

[33] At a party seminar in September 1998, Megawati Sukarnoputri, leader of the secular-nationalist forces and daughter of Sukarno, made clear that she supported the 1945 constitution, contending it had been traduced by Suharto. McIntyre, *The Indonesian Presidency*, p. 195.

conducive to a revolution or civil war, none of the major participants exhibited any inclination to engage in a fight to the finish. Perhaps conscious of the destructive consequences and the horrendous injustice wrought by the killings of communists, alleged communists, and neighbors painted as communists in order to facilitate their elimination between 1965 and 1967, but also conscious of how much they had to gain from a peaceful transition, Indonesia's political leaders avoided anything that could push them to a similar precipice in 1998 and the years immediately following. That tacit decision drove them to the format for constitutional change they ultimately embraced – a format that was evolutionary rather than revolutionary.

Despite the starting inclination to conciliation, it was problematic whether a new constitutional order could be constructed. "Indonesia: Nothing Changes," asserted the headline of a regional magazine article in 2001.[34] *A Country in Despair* was the title of a book on Indonesian politics from 1997 to 2000.[35] By 2001, Indonesia was said in the subtitle of an *Asian Survey* article to have experienced "A Shaky Start for Democracy."[36] Yet, in the teeth of the despair and the shaky start, within a few years the basic task of constitutional renovation was completed. The constitution of 1945 was utterly transformed in the course of its amendment. New laws on political parties, elections, and regional autonomy were enacted, all of them involving major departures. Respected observers called the changes "muddling," "half-hearted," or worse.[37] Gradualism made some think no democratization had occurred. The weak state, which allowed space for vigilantism, criminality, and brutality, did not firm up overnight. Yet it is difficult to gainsay the magnitude of the accomplishment, especially considering the prospects for mass violence or relapse into authoritarianism that were present at the outset.

This was a process involving successive iterations, four major constitutional amendments, and a spate of fundamental statutes reordering political life. Incremental and protracted, such a process was most unlikely to have produced a coherent constitutional design. Indeed, there are many

[34] *Far Eastern Economic Review*, November 1, 2001, pp. 16–19.

[35] Van Dijk, *A Country in Despair*.

[36] R. William Liddle, "Indonesia in 2000: A Shaky Start for Democracy," *Asian Survey*, vol. 41, no. 1 (January–February 2001), pp. 208–20.

[37] Lindsey, "Indonesian Constitutional Reform"; Dwight Y. King, *Half-Hearted Reform: Electoral Institutions and the Struggle for Democracy in Indonesia* (Westport, CT: Praeger, 2003); King, "The Retention of a Paper Constitution and the Prospects for Democratic Consolidation in Indonesia."

questions about the individual changes, the sum of the parts, and their aptness for the conditions and conflicts they would be called upon to regulate. The changes were subjected to withering criticism, and we shall examine the ways in which they may have fallen short. None of them was foreordained, but all of them were heavily constrained by the starting obstacles and the process that was chosen at the outset. Even so, many anomalies were ironed out by the time the process was concluded.

STARTING DOWN THE DEMOCRATIC PATH

B. J. Habibie, Suharto's vice president, succeeded him as president.[38] The omens were bad. Save for a following among some modernist Muslims in the bureaucracy, Habibie was without strong political support, even in Golkar, his own party. A protege of Suharto, he was generally unpopular and particularly unpopular with the military. His cabinet was ill-chosen for the job of reform: it contained, for example, a number of politicians well known to be hostile to the Indonesian Chinese and so unlikely to be able to coax Chinese capital and skills back to the country. He owed his office to a constitution that had legitimated an authoritarian regime but could not realistically be changed by the sitting government. Habibie himself had never intimated any special fondness for liberal democracy, and his first utterances in his new office referred only to "gradual" reform.

And then, within a few days of taking office, Habibie changed. He freed many political prisoners, recognized trade unions, and restored free speech and press. Eventually, he secured the first-ever contested election of a Golkar chairman, who defeated a candidate supported by segments of the armed forces. Habibie then managed to remove Suharto family supporters and 15 military officers from the legislature. Between June and October 1998, 23 percent of the MPR had been replaced.[39] Habibie also

[38] For an excellent account of the forces behind the succession, see Marcus Mietzner, "From Soeharto to Habibie: The Indonesian Armed Forces and Political Islam During the Transition," in Geoff Forrester, ed., *Post-Soeharto Indonesia: Renewal or Chaos?* (New York: St. Martin's Press, 1999), pp. 65–83. For the prelude, see Judith Bird, "Indonesia in 1997: The Tinderbox Year," *Asian Survey*, vol. 38, no. 2 (February 1998), pp. 168–76; Stefan Eklof, "The 1997 General Election in Indonesia," *Asian Survey*, vol. 37, no. 12 (December 1997), pp. 1187–96; Leo Suryadinata, "Democratization and Political Succession in Suharto's Indonesia," *Asian Survey*, vol. 37, no. 3 (March 1997), pp. 269–80.

[39] Ziegenhain, *The Indonesian Parliament and Democratization*, pp. 81–82.

dismissed Suharto's son-in-law from his powerful military command, where the commander had allegedly been engaged in kidnappings and other unlawful activity. Habibie was distrusted by Suharto's supporters, by the armed forces, by all the major extraparliamentary parties, and by students, who thought, cynically, that his maneuvers were designed simply to preserve the status quo.[40] Habibie's political weakness and his aspiration to be chosen president in his own right turned him unequivocally in the direction of reform.[41] He announced early legislative elections, to be held within a year, set in motion the machinery to create new laws on parties, elections, and the legislature, and paid an unprecedented visit to parliament.

Challenged recurrently to create only a limited democracy, on each occasion Habibie declined. He refused an army demand to restrict Muslim political parties, refused a plea from civil servants and army officers to permit them to keep their jobs while standing for political office, and, as we shall see, rejected an electoral system that would have helped his own party. Habibie's support for a regional autonomy law, in the face of opposition from some in the army and from other nationalists, appeased restlessness on the periphery and gave hope that separatist violence could be ended. His action in removing the invidious distinction between indigenous Indonesians and Sino-Indonesians on government-issued identity cards offered a serious gesture of conciliation to badly victimized Chinese.[42] In all, Habibie's newfound democratic convictions

[40] As I was told directly by two Forum Kota student leaders. F.N. 1:117.

[41] For this period, see ibid., pp. 83–102; Leo Suryadinata, *Interpreting Indonesian Politics* (Singapore: Times Academic Press, 1998), pp. 230–33; Bilveer Singh, *Habibie and the Democratization of Indonesia* (Singapore: Crescent Design Associates, 2000), pp. 63–199; Takashi Shiraishi, "Indonesian Politics: Current Situation, Future Outlook," *Asia-Pacific Review*, vol. 6, no. 1 (May 1999), pp. 57–75; Dewi Fortuna Anwar, "The Habibie Presidency," in Forrester, ed., *Post-Soeharto Indonesia*, pp. 33–47; David Bouchier, "Habibie's Interregnum: *Reformasi*, Elections, Regionalism and the Struggle for Power," in Chris Manning and Peter van Viermen, eds., *Indonesia in Transition* (London: ZED Books, 2000), pp. 15–38.

[42] A particularly significant gesture in view of the presence in Habibie's cabinet of several prominent ministers who entertained decidedly anti-Chinese views, as was pointed out by one of Habibie's main opponents. F.N. 1:21.

This gesture was the first of several remarkable changes affecting the status of the Indonesian Chinese. These included repeal of the provision in article 6 of the constitution requiring the president to be a "native [i.e., non-Chinese] Indonesian citizen" and inclusion of a provision of a citizenship law passed in 2006 that abolished legal differences between *pribumi* (indigenous) and non-*pribumi* citizens. For a description, see *South China Morning Post*, July 17, 2001, p. A8.

and the actions that followed helped take conflicts from the streets and move them into the legislature.[43]

All of this came not a moment too soon. Indonesia's various cleavages began to congeal as 1998 wore on. Habibie had called a session of the MPR, still largely unreconstructed, to endorse his plan to enact laws that would make it possible to hold free elections within a year. Two of the major opposition leaders, Megawati Sukarnoputri, the daughter of Sukarno and the acknowledged leader of secular nationalist forces, and Abdurrahman Wahid, a liberal democrat and a traditionalist Muslim leader with a large following, had called for the MPR to meet and elect a new president. The student movement, and especially its radical noncampus "forums," such as Forum Kota (City Forum), began to confront the government directly and to demand an end to military representation in parliament, a trial of Suharto, and the resignation of Habibie. The students were supported by middle-class Jakartans aroused by the army's shootings of students at Trisakti University a few days earlier. Eventually aligned with a group of former generals called the Barisan Nasional (National Front), the student groups were developing an exceedingly risky revolutionary program, involving a complete reconstitution of political institutions from outside.[44]

As the MPR convened in November, students gathered to march on parliament. On November 13, as students and their many supporters among Jakarta's citizens shouted "Hang Habibie" and "Hang Wiranto," the army commander, soldiers fired upon the students, killing several,[45] while elsewhere in Jakarta anti-student Muslims were murdered on the street.[46] In this truly dangerous crisis, with its shades of 1965 and its

[43] Habibie made few missteps, one of which was his agreement to open the congress of one of the New Order parties, the PDI (Indonesian Democratic Party), whose leader had ousted Megawati Sukarnoputri from its chairmanship in a rigged congress in 1996. *Jakarta Post*, August 14, 1998, p. 1.

[44] See Greater Jakarta Student Community, "Proposal for an Indonesian People's Committee," Jakarta, May 28, 1998, translated in David Bourchier and Vedi R. Hadiz, eds., *Indonesian Politics and Society: A Reader* (London: Routledge Curzon, 2003), pp. 285–87.

[45] The soldiers were aligned with Muslim vigilantes, some of whom had apparently been recruited by figures tied to the former regime and aiming to prevent a radical change. Robert W. Hefner, "Cooptation, Enmitization, and Democracy: The Modernist Muslim Dilemma in Indonesia," paper presented at the conference on "Consolidating Indonesian Democracy," Ohio State University, May 11–13, 2001, p. 28.

[46] For this period, see Van Dijk, *A Country in Despair*, pp. 326–48. For the BN and its roots in Golkar (anti-Habibie) politics, see ibid., pp. 326–28; *Far Eastern Economic Review*, October 29, 1998, pp. 20–21. See also *Wall Street Journal*, November 17, 1998, p. A17.

auguries of civil war, the society seemed set to divide between secular nationalists and committed Muslims.

Any chance of a holy war was averted by the decisive action of marine units, which, unlike the army, behaved neutrally on the streets, and by the diplomacy of leading politicians. A few days earlier, Megawati, Abdurrahman Wahid (a.k.a. Gus Dur), the modernist Muslim Amien Rais, and the sultan of Jogjakarta gathered at Gus Dur's house in Ciganjur. The three politicians and the sultan, the most prominent Javanese traditional leader, produced what came to be called the Ciganjur Agreement. It was a statement by the major leaders of the extraparliamentary opposition that they would not endorse the position of those who denied the legitimacy of existing institutions to carry political change forward. Instead, the Ciganjur statement agreed to the MPR session and Habibie's agenda for it: progress toward elections, after which a new government would take office. For the time being, the 1945 constitution would remain in force, and the military would not be expelled from its appointed seats in the MPR. In short, the opposition leaders gave Habibie a license to continue his reforms.

It was a valuable license, given the opposition pedigree of the signatories and the fact that they spanned the religious-secular cleavage as well as the main religious cleavage among Muslims. Amien Rais' assent was particularly important, because he had been in the front rank of those who inspired the anti-Suharto crowds. His later leadership of the MPR's piecemeal reform of the constitution would also help to thwart the ambitions of outsiders who wanted to tear up the old document and start from scratch with an independent commission. Amien had a large modernist-Muslim following. Abdurrahman Wahid came from a distinguished family of religious leaders and had the deep respect of traditionalist Muslims. As already mentioned, Megawati had been ousted forcibly by the old regime's thugs from leadership of the government-approved Partai Demokrasi Indonesia (PDI, or Indonesian Democratic Party) in 1996, whereupon she founded an extraparliamentary party, the PDI-P. The second P stood for *Perjuangan*, meaning struggle. With her conspicuous opposition to Suharto, Megawati's popularity soared. All three leaders, and perhaps the sultan as well, were potential presidents.

Over the short term, the Ciganjur Agreement did not have a calming effect, for some other political figures called for a new provisional government to be formed outside existing structures.[47] Student radicals were

[47] Van Dijk, *A Country in Despair*, p. 353; Kathleen Woodward, "Negotiating a Mass-Driven Transition from Sultanism to Democracy: The Case of Indonesia," paper presented

certainly not reassured by what transpired at Ciganjur. But the MPR session that followed repealed decrees on the special powers of the president and on referenda, which would have made constitutional change very difficult;[48] it also passed decrees limiting presidential terms to two and supporting regional autonomy and human rights.[49] After the session, students continued to press for radical change from outside, and for a time they became more violent. But party politicians committed themselves to the path Habibie had established. From then on, the momentum was with internal reform rather than revolutionary reconstruction.

Now we may well wonder why the leaders who gathered at Ciganjur decided on the course they did – which, arguably, favored their enemies (leftovers from the New Order) over their friends (the students and Jakarta citizens in the streets). A moment's reflection makes clear why they did what they did. In the first place, the dubious legitimacy of the existing constitution meant that to create a new constitution first would be very difficult. The power to appoint its drafters could not be confided to the sitting regime, and any other appointive power would also be a usurpation. Beyond this, the leaders may have feared, and probably did genuinely fear, an emerging civil war. There was much in Indonesian history, and even in recent weeks and months, to bring that fear to life. Even in a conflict short of civil war, they could not be sure of the outcome. For the time being, the military was with Habibie; increasingly, so were some (mostly modernist) Muslims. Amien was a modernist Muslim but was also a friend of the students, and he would scarcely wish to choose one side of the barricade over the other. Gus Dur was no modernist, and he was a nationalist, but he was also on good terms with some military officers.[50] All of the leaders had good reason to believe that, if Habibie could be held to his timetable for free elections, they would be rewarded for their patience. Three of them had (or believed they had) large followings that would, with elections, propel them into power. And none more than Megawati, inheritor of the secular-nationalist mantle. (It would be proven a year later that this was

at the conference on "Consolidating Indonesian Democracy," Ohio State University, May 11–12, 2001, pp. 16–19.

[48] In 1983, the MPR had passed a decree requiring proposed constitutional amendments to secure a 90-percent majority in a referendum in which 90 percent of eligible voters had participated. Under Suharto, there was to be no constitutional change. This decree was repealed by MPR Decree no. VIII of 1998.

[49] Van Dijk, *A Country in Despair*, pp. 25–53.

[50] Each of the three actually had access to distinctive street forces of his or her own, in each case tied to the party or social organization with which the leader was affiliated, but to bring out such forces would have been to risk the emergence of equal and opposite forces – that is, the possibility of civil war.

still the largest stream, even if well short of a majority.) Then, finally, there was the uncertainty of political outcome even if the revolutionists had won, had the leaders sided with them. If events moved in an ever-more-radical direction, who could say that these more or less moderate political leaders could continue to ride the tiger that was the swelling Jakarta crowd, with its uncertain slogan of *reformasi total* and its demand for a "People's Committee" to replace the legislature? Where this movement could lead no one could tell. Better to allow the crowd to nip at Habibie's heels than to allow it to become a decision-making body. No, elections were the right answer, and Ciganjur was a way of holding Habibie to the electoral route.

Once that decision was made and confirmed when the MPR met later in November, the sitting parliamentary politicians of Habibie's fast-changing Golkar – now officially Partai Golkar – Suharto's once-tame instrument now rushing headlong into a reformist posture, and Suharto's equally tame opposition party, the Partai Persatuan Pembangunan (PPP, or Development Unity Party), now contemplating a new role, were bound together with the extraparliamentary opposition, led by Amien, Gus Dur, Megawati, and a handful of others whose parties would ultimately also find their way into parliament. And one of the hallmarks of the reform, as we shall observe, was the mutual accommodation of party elites over time.

In a peculiar way, Suharto's earlier strategy for handling the opposition had created the conditions for this accommodation. His combination of repression and toleration of limited forms of opposition had debilitated the opposition but given it some opportunities to work from within,[51] which Amien, Gus Dur, and Megawati had all done from time to time. Because of these opportunities, the line between insiders and outsiders was not as firm as it might otherwise have been. Consequently, the extraparliamentary opposition could work together with ex-insiders to create a new regime. This is one of several paradoxes by which Suharto's practices facilitated creation of the democracy that followed him.

THE DRAMATIS PERSONAE OF REFORM

Suharto's regime had left behind a stunted civil society, with the conspicuous exception of Islamic organizations, and so it is not surprising that the crowds favoring radical reform produced no dominating leader.

[51] See generally Aspinall, *Opposing Suharto*.

Electorally oriented politicians could, therefore, gain control of the reform movement.[52] The crowds were not ill-disposed toward those politicians who were outside the regime and its parliament.

Even the parties in parliament were not beyond redemption from their long-term collaboration with the New Order regime. Indonesia has a history of legitimating organizations illegitimate in their inception. For example, Masjumi, an Islamic party created by the Japanese in 1943 to control the forces of Islam, became a legitimate parliamentary party after independence, coming in second in votes in the 1955 election. Two of the New Order's parliamentary parties reinvented themselves in 1998–99. Suharto's Golkar, dominated though it had been by retired generals and bureaucrats, contained some genuine politicians, who quickly recognized the need to turn Golkar into a competitive party if it were to survive, and they took steps to take it over, defeating its antireform chairman, a retired general. Some Golkar legislators were later to cast an historic vote in the MPR that helped end Habibie's political career. The PPP, with its base in the mosques and religious schools, also contained serious politicians. Some even said it contained only professional politicians, with no other occupations to fall back on.[53] To stem the outflow of supporters, the PPP soon asserted its independence from the regime. Inadvertently, by supporting Megawati's opponents in the PDI, the third party permitted under the New Order, Suharto had discredited that party, enabling Megawati to gain support for her offshoot, the PDI-P, and to seize the mantle of the secular-nationalist opposition.[54] In the 1999 election, PDI-P came in first, Golkar second, and PPP third – an astounding feat for the latter two parties, formerly tied to the New Order.[55]

In addition to the parties that evolved out of the old regime, four others emerged from Muslim organizations. Gus Dur's Partai Kebangkitan

[52] For a similar assessment, see Edward Aspinall, "Indonesia: Transformation of Civil Society and Democratic Breakthrough," in Muthiah Alagappa, ed., *Civil Society and Political Change in Asia* (Stanford: Stanford University Press, 2004), pp. 61–96.

[53] F.N. 2:158 (an official closely involved in the reforms). The parliament elected in 1997 contained 325 Golkar members, 89 from the PPP, and 11 from the PDI. (This election occurred after the split of the PDI-P from the PDI.)

[54] As of 1998, the PDI-P could be described as the party of multiple minorities: *abangan* Muslims, secularists, Christians of many ethnic groups, Balinese Hindus, Dayaks, and Chinese. In the context of the fragmentation of all other social groups, this gave PDI-P an enormous starting advantage in future elections. For the concept of an *abangan* Muslim, see Clifford Geertz, *The Religion of Java* (New York: Free Press, 1960).

[55] Compare the predictions of the demise of both Golkar and the PPP. *Far Eastern Economic Review*, June 4, 1998, pp. 16–18; ibid., June 25, 1998, pp. 23–24.

Bangsa (PKB, or National Awakening Party), shared with the PPP the support of followers of the traditionalist Nahdlatul Ulama (NU, or Awakening of Muslim Scholars), with its roots in the *pesantren*, Islamic schools, in the Javanese countryside in PKB's case, more in the Outer Islands in PPP's. Amien Rais' Partai Amanat Nasional (PAN, the National Mandate Party) shared with PPP the support of modernist Muslims, many affiliated with Muhammadiyah, led by Amien until August 1998. But PAN also aspired to transcend the Muslim-secular and Muslim-Christian cleavages and did not style itself as an Islamic party, leaving the way open for other modernist parties. The Partai Bulan Bintang (PBB, or Crescent Moon and Star Party), saw itself as the successor to Masjumi, a modernist Muslim party that had aimed at a closer alignment of the state with Islam and had been outlawed by Sukarno. Partai Keadilan (PK, or Justice Party), initially led by an American-trained specialist in dairy farming, had the support of devoutly Muslim university students, participants in Islamic study groups (*usruh*) who were committed to *dakwah* (connoting Islamic revival). PK espoused Islamist ideas about the polity. There were other parties formed during the Habibie period, some of them splinters of the ones already mentioned, but none that achieved serious electoral significance.

The most important parties thus evolved out of the old regime or out of preexisting organizations. An array of politicians was ready to move into the breach, once Habibie announced his objective of elections within a year.

In the emerging configuration, the Muslim-secular cleavage was easy to identify, but the Muslim parties were divided by their alignment along the traditionalist-modernist spectrum as well as their orientation toward ideas about an Islamic state, and they were further divided (within such streams) by their support for particular leaders and movements. The division between New Order parliamentary parties (especially Golkar and PPP) and the extraparliamentary parties (all the rest) might have seemed significant, but it was not at all unbreachable. Not only were Golkar and PPP scurrying to burnish their tarnished populist credentials – in November 1998, before elections had been held, the PPP announced it would represent the extraparliamentary opposition in parliament – but each had connections to parties outside parliament. The PPP was securely in the Islamic camp, but it did not sever its ties to Golkar. Golkar, it turned out, had affinities to PDI-P. Whatever their differences, Suharto and Sukarno were both anchored in the secular-nationalist stream (although both occasionally sprinkled themselves with bits of Islamic green), and Golkar and

PDI-P inherited those affinities.[56] Ironically, although PDI-P was the most abused party in the terminal phase of the New Order, it turned out to be the party most attached to the 1945 constitution and most conservative on constitutional matters.[57] For that matter, Gus Dur's PKB was based on NU, an Islamic organization that was pragmatic even as it was oppositional: it had worked with local power holders to solve problems and receive benefits under the New Order.[58] Gus Dur also had cordial relations with Megawati, and their two parties acted in concert during this early reform period. Even the main extraparliamentary parties, then, did not espouse root-and-branch opposition, and certainly not to the post-Suharto regime evolving during the Habibie period.

New parties, such as PAN, PBB, and PK, and several smaller Muslim parties were formed, but they did not really have to organize afresh: a modest base awaited each of them. Once formed, the Islamic parties pursued powerful rivalries among themselves.[59] But, taken together, the political parties, parliamentary and extraparliamentary, had no real competitors for leadership of the reform. Academics, government think tanks, and a few public interest organizations were heard from occasionally, but always as dispensers of advice to the acknowledged power holders, not as contenders for the job. And, as soon as they saw elections on the horizon, gradual reform was not at all distasteful to these politicians.[60]

It is in this distinctive sense of parties and leaders outside parliament joining those already inside to monopolize the process of change that the Indonesian reform can appropriately be called insider dominated. There was some continuity of personnel from one cabinet to another, from

[56] As Vedi R. Hadiz astutely demonstrates in "Reorganizing Power in Indonesia: National and Local Dynamics," paper presented at the conference on "Consolidating Indonesian Democracy," Ohio State University, May 11–13, 2001, pp. 13–17.

[57] See Donald K. Emmerson, "A Tale of Three Countries," *Journal of Democracy*, vol. 10, no. 4 (October 1999), pp. 35–53, at p. 44.

[58] See Robin Bush, "Islam and Civil Society: The Case of Nahdlatul Ulama," unpublished paper, n.d., ca. 2001 or 2002, pp. 19–20.

[59] See, e.g., *Far Eastern Economic Review*, March 11, 1999, pp. 26–28.

[60] For a convenient survey of parties in this period, see Charles U. Zenzie, "Indonesia's New Political Spectrum," *Asian Survey*, vol. 39, no. 2 (March–April 1999), pp. 243–64. See also Marcus Mietzner, "Nationalism and Islamic Politics: Political Islam in the Post-Soeharto Era," in Arief Budiman, Barbara Hatley, and Damien Kingsbury, eds., *Reformasi: Crisis and Change in Indonesia* (Melbourne: Monash Asia Institute, 1999), pp. 173–200; *Indonesian Observer*, January 5, 1999, p. 1; *Far Eastern Economic Review*, January 28, 1999, pp. 22–23; Kevin Evans, "Party Politics Takes Off," *Indonesian Sectoral Research* (ANZ Investment Bank/Panin Sekuritas, Jakarta), August 6, 1998; Edward Masters, "Indonesia's 1999 Elections: A Second Chance for Democracy," paper presented at the Asia Society, New York, May 10, 1999, pp. 11–16.

Suharto's to Habibie's and, after the 1999 elections, to Gus Dur's and Megawati's.[61] The old institutions were taken over intact by the reformers, and this proved convenient, for the MPR had two indispensable constitutional powers: to amend the constitution and to select the president and vice president. These were powers the new incumbents were quite happy to have as they contemplated constitutional change. Yet the very exercise of these powers meant that the old institutions would be only partially discredited as the process unfolded. And so a reconstruction from scratch became less likely.

Habibie's initial weakness thus led to his serious reformist agenda, which contained an irresistible electoral temptation for the extraparliamentary opposition, which led the outside politicians to bless Habibie's efforts, which in turn produced their entry into parliament under laws passed by the old regime under the existing constitution, which then gave them the power to use that instrument in order to change it. Unsurprisingly, once elected, they did not share the power to reform institutions with any outside forces, bodies, commissions, or conventions, and they worked over time to produce changes that could bridge the considerable differences among themselves. Repeatedly, civil society groups demanded a constitutional commission to draft a new constitution, objecting to a constitution that "resulted from horse-trading among the politicians."[62] Repeatedly, they asserted that incumbents of institutions in need of reform could not reform themselves.[63] Repeatedly, they were rebuffed.[64]

Habibie's initial success, therefore, in dangling the prospect of elections shaped the course of what followed. Three points bear emphasis. First, as the reformers acted, they moved from the easy issues to the harder ones, on which there was less consensus. One of the advantages of their gradualism was to avoid precipitating a sharp break within parliament on any

[61] See Edward Aspinall, "Indonesia: The Irony of Success," *Journal of Democracy*, vol. 21, no. 2 (April 2010), pp. 20–34.

[62] *Jakarta Post*, August 10, 2002.

[63] Indrayana, "Indonesian Constitutional Reform 1999-2002," p. 225. Indrayana, who is critical of the limited outside participation in the Indonesian process, chronicles the periodic clamor for an expert commission to draft a wholly new constitution. For PDI-P, with its fear of revisions favorable to an Islamic state, this idea was always a nonstarter. Secular nationalists had the votes in the MPR to prevent it.

[64] Except for a commission appointed at the very end of the process to make recommendations merely in order to harmonize the constitutional amendments that had been enacted. Ibid., pp. 226–28. I deal with the MPR's response to recurrent demands for a commission in Chapter 5, note 128.

contentious issue. They could always postpone controverted questions to the following year's session. Their delay and conservatism irritated concerned intellectuals and bred a good deal of cynicism about the continued participation of political entrepreneurs and shadowy figures from the former regime,[65] but it was deemed more important to placate opposition inside parliament than outside. Second, gradual reform within the confines of the preexisting institutions narrowed the band of acceptable innovation and so raised questions about the aptness for Indonesia's predicament of the institutions that were adopted, just as it raised questions about whether the institutions adopted at the outset fit well with those adopted at the end of the multiyear process. Third, a point that can scarcely be overemphasized: by seizing the initiative, the politicians shut down, for the most part, the activity on the streets that threatened to plunge the country into disorder and polarization, not to mention destructive activity by the poorly controlled, factionalized armed forces.

There was violence in various parts of the country, to be sure, but it had little to do with the constitutional change being enacted or postponed. Some of the violence had begun before 1998 and was not linked to the democratic reforms. Some, however, resulted from or intensified with the breakdown of security controls that accompanied the end of Suharto's New Order. With the exception of anti-Chinese violence in Jakarta in May 1998, which was rather clearly connected to pro-Suharto elements, most of the violence of the transition period concerned either longstanding regional and ethnic grievances against the center, as in the case of Acehnese and Papuan separatist movements, or local religious and ethnic rivalries, in Kalimantan, Maluku, and Central Sulawesi, that the uncertainty associated with any transition might have heightened. Vicious though this violence often was, it was not comparable to the widespread hunt for communists, real and imagined, that had accompanied the protracted downfall of Sukarno.[66]

[65] See Vedi R. Hadiz, "Reorganizing Power in Indonesia: National and Local Dynamics," paper presented at the conference on "Consolidating Democracy in Indonesia," Ohio State University, May 11–13, 2001, pp. 2, 11; "Delay of Presidential Election Bill Will Affect General Election Quality," *Kompas Online* (Jakarta), November 12, 2001, www.kompas.com/kompas-cetak/0111/12/ENGLISH/dela.htm, accessed December 18, 2007.

[66] During the years of the constitutional reform, many people died in violence in various parts of the country, principally on the periphery. By one count, excluding secessionist warfare in Aceh and Papua, 8,285 people died in violent episodes, 89 percent of them ethnic or religious, all over the country from May 22, 1998, to 2003. Ashutosh Varshney, Mohammad Zulfan Tajoeddin, and Rizal Panggabean, "Creating Datasets

The scene in Jakarta became increasingly tranquil. By early 1999, student leaders had turned their attention from replacing the regime root and branch to monitoring the elections the regime was planning.[67] As the process wore on, the democratic outcome was less in doubt. The participants became ever more committed to the process, the crowd became mollified, and innumerable lives were saved. Considering the hundreds of thousands killed in the mid-1960s, this was a relatively peaceful transition.

in Information-Poor Environments: Patterns of Collective Violence in Indonesia, 1990-2003," *Journal of East Asian Studies*, vol. 8, no. 3 (September–December 2008), pp. 361–94. This count, however, omits certain provinces. Gerry van Klinken, *Communal Violence and Democratization in Indonesia: Small Town Wars* (London: Routledge, 2007), p. 4, estimates that 19,000 died during the period of the transition. His figure includes secessionist violence in Aceh, mid-1998 to mid-2005, and in Papua, as well as other periods of ethnic and religious violence, for which he provides no starting or ending dates. These deaths may have been roughly coterminous with the period of constitutional reform, but they were not directly caused by it in the way the massive violence of 1965–67 was caused by the hunt for communists, real or imagined, that grew out of the earlier regime change. As we shall note, however, the one exception to this generalization was violence that resulted from the decentralization program initiated in 1999 and implemented and modified thereafter. In a few localities, devolution did stimulate struggles to control new regional governments, but the vast majority of the casualties enumerated by Varshney et al. and van Klinken were not stimulated by the devolution program, and eventually almost all of Indonesia's collective violence was ended by the democratic regime.

[67] As a student leader confided in an interview, August 10, 1998, Suharto's resignation opened up differences among the students about their agenda. Many concluded that the struggle was less urgent, and few paid attention to the details of democratization, as the movement split into factions. F.N. 1:7–8.

3

Creeping Reform

Reconfiguring the Political Infrastructure

The Indonesian achievement is all the more noteworthy considering the preexisting constitution, with its murky relations between the MPR and the president, its unique legislature and supralegislature, the latter with unelected military, regional, and functional-group members, its hypercentralization, and its absence of legal controls. That a gradual reform reduced these anomalies progressively until they disappeared, and ultimately produced a defensible set of institutions, was in itself remarkable.

It was clear from the beginning that the 1945 constitution, sacred to some, deeply flawed to others, was, for the moment, untouchable if the process were to get off to a smooth start. For that reason, Habibie's policy of elections before amendment was uncontested. Apart from that, nothing about possible new institutions was clear, and just about everything was in flux.

Much changed along the way. At the outset and even much later, there was considerable support for single-member, constituency-based elections, so as to kill central party dictatorship and hold representatives accountable to the voters. Yet such an electoral law was never enacted. There was, likewise, great doubt about whether there would or could be a directly elected president. Many wanted presidential accountability to the electorate, but powerful forces opposed it, and some feared a strong presidency would revive authoritarianism. In 1998, there was much sentiment in favor of – in the most popular phrase of the period – checks and balances, indeed so many of them that there might be a proliferation of veto centers: a president and vice president from different parties (possibly elected indirectly), a multiparty cabinet, two or even three houses of the legislature

(the DPR, MPR, and a new regional house), staggered terms, strong judicial review, regional devolution, and a broad, sword-of-Damocles impeachment power. With a parliament divided among four or five main parties, these institutions might well produce weak government with a high degree of internal conflict and immobilism.[1]

As late as 2000, some of these institutional ideas retained their appeal across party lines, even among those most involved in drafting the reforms.[2] A survey of MPR members conducted between November 1999 and January 2000 found that only 13.9 percent supported a proportional electoral system for the legislature, only half favored direct election of the president and vice president, and only 24.2 percent believed a president and vice president should come from the same party.[3] Yet, in the end, a proportional system, direct presidential election, and a requirement for a single presidential–vice presidential electoral ticket (although not necessarily from the same party) were adopted. The reformers were engaged in a profoundly evolutionary process.

HAUNTED BY HISTORY

The constitutional reform proceeded from a keen appreciation of Indonesian history. In many ways, it began as a decidedly backward-looking exercise, and it took years to turn it in a forward-looking direction. Although many Indonesians were convinced that the 1945 constitution needed fundamental revision, some, particularly in the committee that eventually began the drafting, found the indirect election of the president enshrined in the 1945 document a convenient way to prevent a concentration of executive power of the sort Indonesia had experienced for four decades. A president with a direct popular mandate was seen as dangerous.

[1] My field notes from 2000 are filled with remarks about the recurrent desire for multiple checks on the central government and the desire to limit Javanese power. In 1998–99, fear of territorial fragmentation had been a stronger theme.

The New Order had left behind a severe aversion to unchecked power, especially executive power. This was reinforced by what the reformers took to be the main thrust of the United States Constitution. Americans, Indonesian elites understood, know how to limit power, and the Indonesian central government, especially its executive, had had an excess of power. Hence the appeal of checks and balances.

[2] Here I am drawing on the views expressed at a private meeting of nearly a dozen and a half key legislators from a half dozen parties, convened by the public interest group CETRO in Jakarta, on May 11, 2000. F.N. 2:44–53.

[3] Center for Electoral Reform, "Result of Polling of MPR Members, Nov. 1999–Jan. 2000," Jakarta, n.d., pp. 2, 4.

In any other country, such strong apprehensions might have led to creation of a parliamentary regime, but here, again, Indonesia's history intruded. As I noted in Chapter 1, the only free national elections Indonesia had experienced previously were held in 1955, during a period of parliamentary rule. They produced a fragmented parliament, in which 28 parties had won seats. Four parties, however, received among them about three-fourths of the total vote and fully 77 percent of the seats, and so party support was not impossibly fractured.[4] Nevertheless, from the vantage point of four and a half decades later, the 1955 election ushered in a period of unstable coalitions that formed and re-formed until Sukarno and the military overthrew the parliamentary regime in 1959. The prevailing elite Indonesian understanding of this period is that parliamentary government proved itself unsuitable for a country with Indonesia's divisions. Quite different interpretations of the instability of the late 1950s are perhaps more persuasive,[5] but they found little favor among Indonesian elites. A parliamentary regime was just not on the cards.

Caught between two bad memories – one that recalled concentration and abuse of power and another that recalled legislative fragmentation and instability – Indonesian decision makers faced a dilemma not unlike the one that confronted the framers of the American constitution, but they solved it differently. The Americans had had a bad experience of a strong executive, the British Crown, and entertained grave apprehension of untrammeled popular power, reinforced by Shays' Rebellion of 1786. The Philadelphia convention lurched between support for outright legislative supremacy and direct election of a chief executive. Working behind the scenes in two committees, a small group of delegates from two states that had had favorable experiences with governors managed to present the convention with a reasonably strong president to be chosen indirectly by an electoral college.[6] The Indonesians, by contrast, awaited the development of a consensus, which took more than three years to emerge. Only in

[4] Herbert Feith, *The Indonesian Elections of 1955* (Ithaca: Cornell Modern Indonesia Project, 1957), pp. 58–59.

[5] Some scholars attribute the decline of Indonesian democracy in the 1950s to an undisciplined military, regional resentments against Java, differences of opinion concerning the role of Islam in the state, or alarm about the success of the Indonesian Communist Party. See Herbert Feith, *The Decline of Constitutional Democracy in Indonesia* (Ithaca: Cornell University Press, 1962); R. William Liddle, "Indonesia's Democratic Past and Future," *Comparative Politics*, vol. 24, no. 4 (July 1992), pp. 443–62.

[6] See Charles Thach, Jr., *Creation of the Presidency, 1775–1789*, 2d ed. (Baltimore: Johns Hopkins University Press, 1969). See also Donald L. Horowitz, "Is the Presidency Failing?" *The Public Interest*, no. 88 (Summer 1987), pp. 3–27.

2001 did they enact an amendment that withdrew sovereignty from the MPR, acknowledged that it belonged with the people, and created a separation-of-powers regime, with a directly elected president and vice president not subject to removal on mere policy grounds.[7]

It would take yet another two years to decide exactly how to elect the president. This delay derived from differences among parties and politicians but also in part from a different set of dilemmas: between antipathy to excessive power at the center and excessive power for Java (and the Javanese), on the one hand, and, on the other, apprehension about another form of fragmentation – not legislative fragmentation but territorial fragmentation. Java contains more than half of Indonesia's population. In ethnic terms, the Javanese are by far the largest group in Indonesia, with well over two-fifths of the total population in 2000; the second largest, the Sundanese, who also live on Java, comprise under a sixth, and all other groups are much smaller.[8] Java (or the Javanese alone) might have the numbers to elect a president under some electoral systems. Under others, Java's power could be limited.

Early in the democratization process, in 1998–99, decision makers, confronted with rebellions in Aceh, Irian Jaya, and East Timor, and with threats of revolt elsewhere, concentrated their attention on preventing Indonesia's territorial disintegration. These efforts animated the political parties and electoral laws of 1999, as well as the devolution laws of the same year. In the background to this concern lay the Dutch creation of a United States of the Republic of Indonesia during the war for independence. The short-lived USRI was viewed as an illegitimate attempt to divide and rule, and it made federalism the enduring f-word of Indonesia. The regional revolts of the late 1950s confirmed Indonesians at the center in their abiding fear of territorial fragmentation.

People in the Outer Islands, however, had an equal and opposite concern – that Java and the Javanese, who inhabit the central and eastern portions of that island, not dominate everything. Suharto's regime, like Sukarno's, drew heavily on Javanese tradition and leadership. To be sure, the regime

[7] Third Amendment to the 1945 Constitution of the Republic of Indonesia, November 9, 2001, amending, *inter alia*, articles 1, 3, and 6, and adding, *inter alia*, articles 6A, 7A, and 7B. See National Democratic Institute, "The Fundamental Changes that Nobody Noticed: The MPR Annual Session, November 2001," Jakarta, January 2002.

[8] Leo Suryadinata, Evi Nurvidya Arifin, and Aris Ananta, *Indonesia's Population* (Singapore: Institute of Southeast Asian Studies, 2003), p. 13. Many Javanese, of course, do not live on Java but on other islands of the archipelago, to which they have been migrating for many decades.

incorporated non-Javanese elites of the Outer Islands and, after the 1970s, some observant (*santri*) Muslims; but, even in the Outer Islands, retired Javanese army officers formed the core of political control under Suharto.[9]

Outer Islanders could and did claim that the origin of democratic and egalitarian principles in Indonesia lay outside Java, specifically, according to some, in the cultural milieu of Sumatra,[10] from which emanated the liberal founding fathers Mohammad Hatta and Sutan Sjahrir. By contrast, leaders such as Sukarno and Raden Supomo (author of the 1945 constitution) were more affected by the Javanese emphasis on hierarchy and order, and the same view permeated the Suharto regime. Significantly, Hatta had favored a federal form of government in 1945; and, despite the 1945 constitution, in that year Sjahrir became prime minister of an essentially parliamentary regime. Strong centralization was a Javanese product.

A mild Javanophobia drove some of the constitutional reforms – from devolution to the apportionment of legislative seats, to the creation of a house to represent regions, to the requirement of a single presidential–vice presidential ticket (in which one of the candidates would presumably be an Outer Islander), and to the formula finally agreed for election of the presidential ticket. If the fear of legislative and territorial fragmentation was the theme of the 1999 laws, there was a shift by 2000 to the fear of central (read: Javanese) domination. Thereafter, the two themes alternated, one driving some reforms, the other driving others. Occasionally, the opposing themes resulted in the creation of institutions structured on opposite assumptions but required to work in tandem.

Underlying this oscillation was the differential identification of the major parties. During this period, Golkar's support was disproportionately located in the Outer Islands, as was that of the PPP. The PDI-P of Megawati drew heavily on Java, Bali, and the Christian areas of eastern Indonesia, while the PKB's followers were most numerous in central and east Java. The first two parties were, to some considerable degree, decentralizers, while the last two were in the opposite camp. Party interest and historical apprehension went hand in hand.

[9] See Burhan Magenda, "Ethnicity and State-Building in Indonesia: The Cultural Base of the New Order," in Remo Guidieri et al., eds., *Ethnicities and Nations: Processes of Interethnic Relations in Latin America, Southeast Asia, and the Pacific* (Austin, TX: Rothko Chapel, 1988), pp. 345–61; Y. B. Mangunwijaya, "Indonesian Problems and Prospects," in R. William Liddle, ed., *Crafting Indonesian Democracy* (Jakarta: Mizan, 2001), pp. 85–88.

[10] And, in particular, West Sumatra, home of the Minangkabau people. See an essay by a notable Minangkabau scholar, Dewi Fortuna Anwar, "The Transition to Democracy in Indonesia," in Liddle, ed., *Crafting Indonesian Democracy*, pp. 81–84.

THE ELECTORAL SYSTEM: FOREIGN MODELS AND PARTISAN ADVANTAGE

The last time institutions were truly in flux in Indonesia, in 1966, after the fall of Sukarno, there had been a proposal to introduce first-past-the-post elections in single-member constituencies, in place of the existing proportional system. Parliament rejected the idea, probably because it might dilute the influence of party leaders.[11] In the mid-1990s, Suharto had asked the Indonesian Institute of Sciences (LIPI) for new ideas on the same question. Again, the answer was first-past-the-post, but this time in stages. The 2002 election, LIPI said then, should be a hybrid PR-FPP system, to become entirely FPP by 2007. When Habibie asked for ideas in 1998, LIPI suggested a list-PR system, but with candidates required to reside in a local area – a significant change, since more than 60 percent of all candidates in the 1997 election lived in Jakarta.[12] This was only one of several proposals floating around: one from the Legal Aid office, another from the Department of Justice, yet another from Habibie's organization of Muslim intellectuals. Most favored PR.[13] None, however, impressed Habibie.

One proposal was decidedly different, and for a time it and its authors seemed to have clear sailing. Even before Suharto resigned, his minister of home affairs had appointed a team to work on laws related to elections, parties, and governmental structures. When Habibie took office, his new minister of home affairs gave the team a two-month deadline to report, and he supported the team's efforts.

The Team of Seven (Tim Tujuh), as it came to be called, was an extraordinary group. Chaired by an academically oriented senior civil servant, it consisted of a student leader and six academics, five of them with strong backgrounds in American political science. They had studied at Northern Illinois, Ohio State, or Hawaii.[14] The Ph.D. dissertations of

[11] See Miriam Budiardjo, "The Electoral System (Points for Discussion)," in Liddle, ed., *Crafting Indonesian Democracy*, pp. 127–32.

[12] I am drawing on interviews with the coordinator of the LIPI proposal of 1998 and with personnel at the Legal Aid Foundation. F.N. 1:95; 1:105.

[13] F.N. 1:97. See Kevin Evans, unpublished manuscript on crisis and reform in Indonesia, n.d., p. 17. Evans was very close to Tim Tujuh. It would not be amiss to call him the eighth member of the Team of Seven.

[14] F.N. 2:187. All of these are institutions with strong programs and well-known scholars on Indonesia or Southeast Asia, or both. Obviously, some team members had studied at more than one American university. For a list of the team, see Evans, unpublished manuscript on crisis and reform, p. 18. See also *Kompas* (Jakarta), August 8, 1998; Harold Crouch,

several concerned the Indonesian electoral system or voting behavior. Their common American education bound them together. They had a great deal of independence – for example, their consultations with parties were minimal – and the inclinations of most of them were heavily shaped by their American experience. They favored laws to foster a small number of national political parties, plurality elections, and a strong legislature to match a strong president. One member of the team floated the idea of electing the president by means of an electoral college, and he also fancied national party conventions, replete with American hoopla, at which candidates would be selected. This was, of course, a reverie, but it shows that the team's convictions had been formed by seeing Indonesia through the lens of America, albeit America without party primaries. Against the background of Indonesia's multiple divisions, historically reflected strongly in party politics, it is not surprising that the idea of a small number of catch-all parties would be attractive.

The atmosphere in Jakarta at this time was suffused with foreign involvement – not the sort that provided instructions with which Indonesians had to comply but the sort that supported the Team of Seven in its wish to put American or other representative institutions to work for an Indonesian democracy in the making. On the scene were representatives of a half dozen international organizations dedicated to constitutional and electoral reform, including the National Democratic Institute and the International Republican Institute, both headquartered in Washington, and a particularly influential Australian, knowledgeable about Indonesian culture and politics and keenly interested in American-style institutions as facilitators of the grassroots democracy so obviously absent in Indonesia. As the Indonesian reform process began, it was extraordinarily open to external inspiration.[15]

The Team of Seven was hardly immune to Indonesian apprehensions, as we shall soon see, but it consulted often with foreigners (sharing pizza with them!) at some of its nightly meetings, and it espoused a set of deeply held ideas whose provenance lay outside Indonesia. Its deliberations at this stage were largely outside the usual processes of negotiation and reciprocal concession. In this way, the team initially performed rather like a specially appointed commission or a comparable outside body.

Political Reform in Indonesia after Soeharto (Singapore: Institute of Southeast Asian Studies, 2010), p. 79 n. 8.

[15] That is not to say that any of the Western organizations represented in Jakarta suggested or endorsed Tim Tujuh's proposals. None did. But the internationalization of the environment lent plausibility to the foreign-derived ideas of the team members.

One reason Tim Tujuh could function this way was that political parties were, for the most part, quiescent during this early post-Suharto period.[16] Busily organizing themselves, they produced no full-blown proposals of their own. A count of 150 news articles on the draft laws that ultimately emerged from the team revealed, astoundingly, only 13 quotations from PAN, six from PKB, and three from PDI-P.[17] Amien Rais privately made known his fear that plurality elections would hurt smaller parties,[18] and most in PDI-P, despite its likely plurality status in the coming elections, preferred PR;[19] but the general attitude of the party politicians in mid-1998 was that they would simply be willing to compete under whatever ground rules emerged. (Students, too, were inattentive to reform issues: they were focused on bringing Suharto to trial, and in any case they mistakenly saw the legislature as a pliant tool of government.[20]) The tardiness of the parties in entering the reform debates left room, at the outset, for Tim Tujuh to get the reforms going. Eventually, however, party politicians intervened to reverse what they found unacceptable in the team's proposals.

At the core of the Tim Tujuh draft electoral law was a lower house (Dewan Perwakilan Rakyat, the DPR or Chamber of People's Representatives) consisting of 550 members, 495 of them elected.[21] It was considered infeasible at this stage to eliminate appointed military members, but their numbers were to be reduced to 55.[22] (The MPR cut the number to 38 and at a later stage ended military representation altogether.) Of the 495 elected legislators, in the Team of Seven plan, 420 were to be chosen by plurality vote in single-member constituencies.

[16] See Kathleen Woodward, "Negotiating a Mass-Driven Transition from Sultanism to Democracy: The Case of Indonesia," paper presented at the conference on "Consolidating Indonesian Democracy," Ohio State University, May 11–12, 2001, pp. 16–19, at p. 19; F.N. 1:82; 1:87 (close observers of the process).

[17] Philipp Kuntz, "Actors, Proposals and Motives in the Indonesian Transition Process – The Making of Three Political Laws," unpublished paper, Duke University, Spring 2000, p. 7.

[18] F.N. 1:40 (a Team Tujuh member).

[19] Patrick Ziegenhain, *The Indonesian Parliament and Democratization* (Singapore: Institute of Southeast Asian Studies, 2008), p. 104. This would not be the last time that PDI-P espoused positions contrary to its electoral interests.

[20] F.N. 1:117 (two Forum Kota leaders); Evans, unpublished manuscript on crisis and reform, p. 24.

[21] For these proposals, I am drawing on multiple interviews with participants and observers. F.N. 1:3, 14, 34, 59.

[22] The MPR was to consist of the 550 DPR members plus 81 indirectly elected regional representatives (three for each of the then-27 provinces) and 69 sectoral group representatives (based on gender, religion, and occupation), taking account of their underrepresentation in the DPR.

Seventy-five were to be elected by national-list proportional representation, but only by counting votes for candidates who lost in the plurality elections. All of the losing candidates' votes would be aggregated into a national tally for each party. To win a PR seat, a party would need one vote more than one seventy-fifth of the national tally. Obviously, the purpose of the PR seats was to represent significant but geographically diffuse interests – or, more urgently, to compensate for the possibility that first-past-the-post (FPP) combined with a fragmented party system could produce a large number of winners who had gained considerably less than a majority of the constituency's vote.[23]

The plurality vote was the heart and soul of the proposal. It was to "ensure that politicians elected by the public will be responsive to the needs of the communities that elect them," explained an information packet accompanying the proposals. "The emergent political relationship between the politicians and their electorates will therefore be stronger than that between the politicians and their party bosses."[24] As we shall see, the local-democracy rationale for the plurality proposal sat uneasily with the team's draft political parties law, which aimed to foster strong national parties and virtually to forbid locally based parties. It was, however, consistent with the team's fear of legislative fragmentation, based on its reading of the results of the 1955 election. A plurality system, even with 75 losers'-list seats, would reduce the number of parties in the legislature.

The system proposed by Tim Tujuh was vulnerable to producing a great disproportion between seats and votes. The proposal kept constituencies within governmental subunit boundaries and thus created great inequalities of population among constituencies. It also accorded Java and Bali, with about 60 percent of the country's population, only half the FPP seats. Parties that did well there would not be rewarded in proportion to their voter support. In addition, FPP typically gives a seat bonus to the largest party and certainly would have done so in Indonesia. Even with some reduction in the number of parties, there would be many multiparty contests and the possibility of winning a seat on a very low plurality. This was particularly true because of the asymmetric pattern of party cleavages, with the support of modernist Muslims divided among more

[23] F.N. 2:179 (a Habibie confidant).

[24] "Information Pack: Reforming Indonesia's Political System," mimeographed, Jakarta, August 1998, p. 2. To the same effect, see Afan Gaffar, "Electoral Law Reform in Indonesia," paper presented at the conference "Toward Structural Reforms for Democratization in Indonesia," Indonesian Institute of Sciences, Jakarta, August 12–14, 1998, pp. 2–3.

political parties than was the support of either traditionalist Muslims or secular nationalists. Cumulatively, then, there were likely to be many sources of disproportionate outcomes.[25]

The proposal, however, did not fail on any of these grounds. Instead, it ran afoul of the lingering suspicion political parties entertained about the Habibie government and the fear that Golkar, with its preexisting machinery of state on the ground, would be advantaged by a constituency-based electoral system. Such a system would reward the name recognition and cash available to local notables.[26] By contrast, other parties had well-known national leaders, and list PR, it was thought, would facilitate appeals to vote for the party of Megawati or Amien, for example.[27] These feelings were articulated by PPP members of the DPR, who had every incentive to stake their claim as champions of the opposition, in order to overcome their identification with the New Order regime.[28]

A similar opposition had earlier played out in Eastern Europe, where communist parties, believing they had the most visible local candidates, preferred single-member constituencies, whereas the opposition wanted a proportional system.[29] The result in Bulgaria and Hungary had been a compromise: 50–50 hybrid systems. The single-member seats helped the ex-communists in Bulgaria but actually hurt them in Hungary, where – contrary to expectations – they would not have won a single seat without PR.[30] In Indonesia, too, the result was a compromise, but of a different sort. And in Indonesia as in Hungary, some parties failed to calculate their interests correctly.

Ultimately, all parties except one opposed the Team of Seven proposal. The team's hostility to the domination of parties by their leaders was, of course, not shared by those leaders. Nevertheless, the Partai Bulan Bintang, a Masjumi successor, held fast to single-member constituencies

[25] I am drawing here on Donald L. Horowitz, "The Draft Laws on Indonesian Political Parties, Elections, and Legislative Bodies: An Analysis," in Liddle, ed., *Crafting Indonesian Democracy*, pp. 137–47.

[26] This was a widely shared fear outside parliament as well, and it lay behind several of the earlier PR proposals. Interviews with a PKB leader, a prominent journalist, and Legal Aid personnel, respectively: F.N. 1:74; F.N. 1:85; F.N. 1:105.

[27] Amien Rais, leader of PAN, was among the earliest to voice opposition to FPP, based on his fear that it would favor Golkar and generally work against smaller parties such as his. F.N. 1:40; F.N. 1:69.

[28] In November 1998, the PPP announced that it would represent the opposition, including the extraparliamentary opposition, in parliament.

[29] Jon Elster, Claus Offe, and Ulrich K. Preuss, *Institutional Design in Post-Communist Societies* (Cambridge: Cambridge University Press, 1998), p. 66.

[30] Ibid., pp. 120–25.

as a matter of democratic principle, although FPP would disadvantage a small party with dispersed support, such as PBB.[31] (As indicated, the fragmentation of the Islamic parties overall would have led, under first-past-the-post, to major electoral victories for Golkar and especially for PDI-P.) Eventually, many said, the plurality system might be preferable, as LIPI had also conceded, but for now such a system would advantage Golkar.[32] As we shall see, in 2003, 2008, and 2012 "eventually" got pushed out further. Between November 1998, when a legislative commission rejected plurality elections, and January 1999, when the DPR passed the new electoral law, the matter came to a head for the first post-Suharto elections. Habibie, whose support for the team's proposals had aroused the suspicion of the opposition, relented after the PPP made its opposition known. He was inclined to do nothing to impair his democratic credentials.[33] There would be a PR system.[34]

A dispute ensued over whether there would be lists at the provincial level, as smaller parties preferred, or at the level of local governments, as Golkar wished. Both the Dutch and post-colonial governments had utilized provincial PR, so Golkar was pushing against the burden of history. Furthermore, under Golkar's proposal, most localities would have had only one seat, so there would be de facto FPP.[35] When Golkar proposed to use its majority to enact its version – recall that this is still the Suharto-era legislature – the PPP and PDI threatened to walk out, and Golkar reversed course.[36] In return, the other parties agreed to a unique constituency feature grafted onto the PR system.

The unique feature provided that, while parties would receive a share of seats proportionate to the share of the vote they received in a province, the identity of the specific winning candidates would be determined

[31] PBB's leader had studied in Pakistan and Malaysia, where first-past-the-post has been used continuously since independence. Conceivably, this experience affected the party's thinking, but this is speculation.

[32] F.N. 2:102 (a PPP leader); Adnan Buyong Nasution, "Some Notes on the Electoral Law Reform in Indonesia," in Liddle, ed., *Crafting Indonesian Democracy*, pp. 133–36.

[33] Another issue concerned the eligibility of civil servants to run for office and still retain their jobs. Although Golkar officials pleaded with Habibie for leniency on this, he was firm in refusing to agree, having been persuaded by his home affairs minister. F.N. 1:69 (a Golkar insider). Any other position would have been evidence of party favoritism. See Dwight Y. King, *Half-Hearted Reform: Electoral Institutions and the Struggle for Democracy in Indonesia* (Westport, CT: Praeger, 2003), pp. 63–66.

[34] Even after the 1999 election, there was support, inside and outside parliament, for a change to FPP. F.N. 2:86; 2:88; 2:160. Three electoral laws later, no such change was forthcoming, but very small constituencies could come close to producing similar results.

[35] See King, *Half-Hearted Reform*, p. 62.

[36] Evans, unpublished draft manuscript on crisis and reform, pp. 25, 27.

"according to the largest number [of] votes won by the political party concerned" in each district or municipality contained in a province,[37] rather than by the position of candidates on the provincial list. Candidates were to be assigned to particular districts, and those assignments were to be made public. Once the number of seats for each party in a province was determined, the winning candidates would be identified by the relative performance of a party's candidates in each district. Consequently, some candidates could be elected in districts where their party did not receive the largest number of votes, and in some districts candidates with the largest number of votes would not be elected. In the latter case, the party may have performed better in other districts, and so its provincial seats would be filled there. Since party victories were to be calculated by province, some districts could produce several winning candidates; others, none. In short, the attempt at the last minute to graft a constituency feature onto a strict list-PR system was poorly thought out and conducive to anomalous results.[38] As I shall explain, it also caused a variety of administrative problems and irregularities in the election and was abandoned for subsequent elections. Last-minute amendments in electoral proposals usually create difficulties, and this one certainly did.

The idea behind the constituency feature was to create some incentive for candidates to cultivate and be responsive to local voters, rather than merely to party leaders who had placed their names on party lists. As the frequent adoption of hybrid PR-FPP systems attests, electoral policy makers often want to achieve multiple objectives through electoral engineering, and Indonesia was no exception. This particular innovation, however, was ill conceived.

As we have seen, the Team of Seven proposals gave Java and Bali only half the DPR seats. By population, Java and Bali would be entitled to

[37] Republic of Indonesia, Law no. 3 of 1999, art. 68(3), in *Collection of Election Laws* (Jakarta: National Election Commission, 1999).

[38] For an explication, see National Democratic Institute, "The New Legal Framework for Elections in Indonesia: A Report of an NDI Assessment Team," Washington, DC, February 23, 1999, pp. 4–5. I was a member of the three-person international assessment team. See also Kevin Evans, "Assessing Political Reform and the Elections," unpublished paper, Jakarta, May 3, 1999, p. 2; Anthony L. Smith, "Indonesia: Transforming the Leviathan," in John Funston, ed., *Governments and Politics in Southeast Asia* (Singapore: Institute of Southeast Asian Studies, 2001), pp.74–119. Open lists were an alternative that might have provided a stronger constituency element to the PR system, but they were apparently rejected because they required a vote count away from the polls.

receive 60.5 percent of all seats, 59 percent for Java alone.[39] In a gesture to Outer Island sensibilities, the DPR accorded Java and Bali 52 percent and only 50 percent to Java alone.

The adoption of the PR system by the DPR gave rise to dissension within Golkar, even though it had formally opposed the Team of Seven proposal. Many leaders of that party had agreed with the opposition diagnosis that Golkar would fare better under a plurality system. Within days of the decision, a prominent Golkar reformer complained passionately that the district-level apportionment of winning candidates under the PR system had been misrepresented as a first-past-the-post system, whereas what had been adopted was really PR.[40] The government's interest in solidifying its reformist *bona fides* by placating the opposition was different from Golkar's electoral interest, and Golkar party stalwarts noticed which interest prevailed in the compromise. As I noted earlier, some of them later voted against Habibie at a crucial moment, when they had the chance. If Habibie could put the country's interest above theirs, they could put the country's interest above his![41]

The DPR's action had effects across parties as well. There was a great deal of give-and-take in the process, and the legislature functioned for the first time in decades as a policy body that was independent of government.[42] Once the Team of Seven proposal was attacked, the brief interlude of escape from the usual politics of institution building was at an end. Legislators saw that they could work with each other, and parties outside the legislature found that their voices had some weight. This built a good deal of confidence in the general course that Habibie had charted, obviating any need for an appeal to the streets. The politicians took ownership of the process, and reform from within, which the leaders had endorsed at Ciganjur nearly three months earlier, received a major boost.

Because that course entailed elections first, then constitutional reforms, this necessarily meant that the electoral system for the legislature would be decided before deciding on whether to have a directly elected president. Each matter was the subject of completely separate consideration, and the final product – which we shall examine in due course – was a combination of

[39] Computed from Suryadinata, Arifin, and Ananta, *Indonesia's Population*, p. 3.

[40] F.N. 1:90.

[41] That is not to say that their only or even principal reason for voting against Habibie was the electoral system, as there were other reasons, such as his willingness to countenance independence for East Timor, but some MPR members certainly did fume about the electoral-system issue.

[42] See King, *Half-Hearted Reform*, p. 67.

institutions sometimes thought by scholars to produce unhappy consequences: a legislature elected by PR and a directly elected president.[43] This result might have been produced in any event, as the forces for a PR system combined with the fear of immobilism that impeded adoption of a parliamentary system. But incremental decision making guaranteed that result.

THE REGULATION OF PARTIES AND THE FEAR OF FRAGMENTATION

If the Team of Seven and the opposition parties were at odds on the desirability of first-past-the-post, they were very much in accord in fearing the fragmentation of the party system. For the Team of Seven, two forces combined to produce this result: admiration of the two-party system – again, American-derived – and a shared understanding of the unfortunate history that had followed the 1955 elections, in which more than 100 parties had participated.[44] For the legislators and the main parties outside, it was the same understanding of the 1955 election and its aftermath that governed their desire to limit the number of parties – provided, of course, that their own parties were not among those that were limited.

The product of this consensus, however, was not a threshold of, say, five percent of the vote for legislative representation. Such a threshold would have relevance only in a handful of larger provinces, because a party with under five percent of the vote could not secure a seat in provinces that lacked a large number of seats anyway. More importantly, a threshold might not discourage the formation of strong regional or ethnically based parties that might do very well in their own provinces but poorly nationally. Hostility to such parties was a prominent part of the mix. Antipathy to ethno-territorial as well as legislative fragmentation was among the motivations for a somewhat draconian parties law.

The basic outlines were articulated within a couple of months of Suharto's fall. A party would need to affirm its adherence to the Indonesian ideology of Pancasila; it would be obliged not to "harm ... national unity"; it would have to uphold certain principles and "participate" in "national development."[45] The Supreme Court would be

[43] See Scott Mainwaring, "Presidentialism, Multipartism, and Democracy: The Difficult Combination," *Comparative Political Studies*, vol. 26, no. 2 (July 1993), pp. 193–228.

[44] On the latter, see Evans, unpublished manuscript on crisis and reform, p. 26.

[45] "Draft of the Political Party Law" (unofficial translation by NDI Indonesia, typescript, n.d. 1998), arts. 2, 3, 9. The *Pancasila* (or Five Principle) ideology, first laid down by Sukarno

empowered to "cancel the party's committee" when it was "evidently against" any of those provisions.[46] On top of these ideological tests, the draft electoral law would allow a party to field candidates only if it had committees in at least half the provinces and half of the districts and municipalities in each of the provinces and, in addition, at least one million signed-up members nationally.[47] In case these onerous provisions were inadequate to counter the growth of small, locally based parties, the draft electoral law also provided that a party winning fewer than 10 percent of the total number of legislative seats in a given election would be ineligible to contest the next general election unless it merged with some other party.[48] This provision, favored by Habibie[49] but heavily criticized by international observers, was defended as being tantamount to a threshold for parliamentary seats of the sort often found in list-PR systems. But, of course, such thresholds govern representation in the current parliament, not eligibility to offer candidates in subsequent elections. Various other signature requirements and campaign restrictions were placed on candidates.[50]

Most of these burdens were scaled back in the final version. Parties were required to maintain committees in one-third of the provinces (and half the districts and municipalities in those provinces).[51] The signature requirement was dropped altogether. The threshold for participation in the next election, thought too high by several parties, was reduced from 10 percent of seats in the legislature to two percent (or three percent of seats in lower-level legislative bodies, provided they were spread through half the regencies and districts).[52]

Even watered down, these provisions show the extent of the drafters' anxiety about party fragmentation. The law was framed with a jaundiced eye on the 1955 election.[53] The hope was to end up with about four main

in 1945, embraces (1) belief in one supreme God, (2) humanitarianism, (3) the unity of Indonesia, (4) democracy guided by wisdom, and (5) social justice. Over the ensuing decades, *Pancasila* was used to preempt demands for a specifically Islamic foundation for the state.

[46] Ibid., art. 16.

[47] "Draft of the Electoral Law," art. 30.

[48] Ibid.

[49] See King, *Half-Hearted Reform*, p. 70 n. 11.

[50] See Horowitz, "The Draft Laws on Indonesian Parties, Elections, and Legislative Bodies," pp. 139–42.

[51] "Law of the Republic of Indonesia, No. 3 of 1999, Concerning General Elections," art. 82, *Collection of Election Laws*.

[52] Ibid., art. 39.

[53] Evans, unpublished manuscript on crisis and reform, p. 26.

parties.[54] Although hundreds of parties formed after Suharto's resignation, 48 were ultimately found eligible to participate in the 1999 election. The vast majority of them would win few or no seats.

THE CHANGING LEGISLATURE: FIRST STEPS

The Team of Seven also produced a draft law on the composition of the legislature. It scaled back the size of the MPR from 1,000 to 700 by reducing the number of appointed military and so-called functional representatives. Previously, fully half of the MPR had consisted of appointed members. The DPR, as we have seen, was to be increased from 500 to 550, with 55 of the 550 to be nominated members of the armed forces – a reduction from the 75 the military had previously enjoyed.

In each case, a dispute followed concerning the number of appointed seats. The Team of Seven, which would have preferred no military seats,[55] had proposed modest reductions, envisioning further reductions by the legislature. As I mentioned earlier, military seats in the DPR were cut in half, to 38 – a compromise between none, which some in the opposition wanted, and the larger number that most parties seemed able to live with. Solidifying its newfound position in the democratic camp, the PPP opposed any further participation of unelected representatives, managed to force a vote – a first in Indonesia since parliament had resumed in 1971 – and lost.[56] The MPR ended up with 700 members, consisting of all DPR members plus 135 indirectly elected regional representatives and 65 appointed functional representatives. There were additional provisions to augment powers of the legislative bodies vis-à-vis the executive.[57]

Appointed seats for the armed forces were a particularly contentious issue. Outside the legislature, the military's reputation was badly tarnished, and it was understood inside that the reduction was a prelude to the complete elimination of the seats over time. The whole idea of the 1998 reforms was to get to genuine elections, after which more difficult issues could be addressed. High on the agenda was change in the constitution itself, possibly to permit the direct election of the president and reform of the strange relationship between the president and Indonesia's sui generis supra-legislature, the MPR. In the meantime, the disposition was to compromise.

[54] F.N. 1:40 (a prominent drafter).
[55] F.N. 1:14 (a close observer of Tim Tujuh's proceedings).
[56] Evans, unpublished manuscript on crisis and reforms, pp. 15–16.
[57] See King, *Half-Hearted Reform*, pp. 56–58.

CHANGING THE UNITARY STATE

One matter on which there was strong consensus soon after the fall of Suharto concerned devolution. Devolution is an old idea in Indonesia. One of its most respected founding fathers, Mohammad Hatta, had broached the idea of federalism before the Dutch effort to set up puppet states after World War II discredited the idea. There had been a plan for regional autonomy in the 1950s. Elections to assemblies at provincial and subprovincial levels were held in 1957 and 1958,[58] but autonomy was undone by the regional rebellions of the period and the advent of Sukarno's Guided Democracy.[59] Like Sukarno's before it, the Suharto regime had been highly centralized. Suharto appointed many generals to governorships and other senior officers to mayoral (*wali kota*) and district head (*bupati*) positions. Nominally, these positions were filled by indirect elections by regional councils, but actually the choices were controlled by Jakarta. By the 1990s, there was restiveness with some of the choices made by the central government.[60] Suharto's government began in 1995 to shift responsibility for some services, on a pilot basis, to subprovincial levels. After Habibie became president, Amien Rais suggested that Indonesia become a federation. Although the controversy that followed killed that idea, the political elite – especially that part of it that came from the Outer Islands – understood that a major decentralization was imperative.

To begin with, there was great inequality in revenue-expenditure exchanges between the center and the various regions. Java was favored in subsidies, and resource-rich regions were often disadvantaged, as the mining wealth of Aceh, Riau, and Irian Jaya was effectively transferred to Jakarta.[61] There were also active separatist insurgencies in Aceh, Irian Jaya, and East Timor, and threats of others elsewhere.[62] Serious ethnic

[58] Herbert Feith, *The Decline of Constitutional Democracy in Indonesia* (Ithaca: Cornell University Press, 1962), p. 474.

[59] Even more limited promises of autonomy for specific problems, most notably the commitment to accord special status to the restless Acehnese, were long unfulfilled. See Chanintira Na Thalang, "The Fluidity of Nationalistic Aspirations in Aceh," *Nations and Nationalism*, vol. 15, no. 2 (April 2009), pp. 319–39, at pp. 327–28.

[60] Michael S. Malley, "New Rules, Old Structures and the Limits of Democratic Decentralisation," in Edward Aspinall and Greg Fealy, eds., *Local Power and Politics in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2003), pp. 102–16, at pp. 107–08.

[61] See I. Ketut Putra Erawan, "Political Reform and Regional Politics in Indonesia," *Asian Survey*, vol. 39, no. 4 (July 1999), pp. 588–612.

[62] See International Crisis Group, *Indonesia's Crisis: Chronic but Not Acute*, ICG Indonesia Report No. 2 (Jakarta, May 31, 2000), pp. 14–18.

violence was ongoing in Kalimantan and Maluku; in each case, indigenes were pitted against migrants thought to be sponsored by the center. (In Maluku, it soon became a straightforward Muslim-Christian confrontation.) A good many regions sought a measure of autonomy from Jakarta. By the second half of 1998, there were demands, some of them backed by mob action, for the removal of corrupt local officials, many of whom had been chosen in elections rigged by Jakarta.[63] Autonomy demands were especially strong in eastern Indonesia, including Sulawesi, Habibie's home region.[64] In some regions, there were echoes of the Outer Islands revolts of the 1950s. It was important that the new democratic regime start out without such high levels of regional discontent. Originally reluctant, like many Indonesian centralists, Habibie was persuaded by the Team of Seven to the cause of devolution.[65]

The regional autonomy legislation enacted in 1999 did not devolve power to the then-26 provinces, the level at which most separatist sentiment and demands for autonomy resided, but, as in the 1995 pilot project, to districts (*kabupaten*) and municipalities (*kota*) below the provincial level.[66] Indeed, there was a suggestion to abolish the provinces altogether, but the idea was abandoned as too difficult to accomplish before the 1999 election.[67] There was no desire to risk reinforcement of separatist capabilities or of ethnic struggles in heterogeneous regions; the more-than-300 localities below the provinces were more likely to be homogeneous, or, in any case, to find secession an implausible course.

[63] Michael Malley, "Democratization and Regional Political Elites," paper presented at the conference on "Consolidating Indonesian Democracy," Ohio State University, May 11–12, 2001, pp. 5–11.

[64] David Bouchier, "Habibie's Interregnum: *Reformasi*, Elections, Regionalism and the Struggle for Power," in Chris Manning and Peter van Diermen, eds., *Indonesia in Transition* (London: ZED Books, 2000), pp. 15–38, at p. 26. In the wake of the Asian financial crisis of 1997–98, airlines in Indonesia, facing insolvency, scaled back their domestic flights drastically, threatening to cut off peripheral portions of the widely dispersed archipelago.

[65] As was explained to me by a member of the Team of Seven. F.N. 2:15. See also Benjamin Smith, "The Origins of Regional Autonomy in Indonesia: Experts and the Marketing of Political Interests," *Journal of East Asian Studies*, vol. 8, no. 2 (May–August 2008), pp. 211–34.

[66] Laws no. 22 and 25 of 1999. See generally, Mark Turner and Owen Podger, *Decentralisation in Indonesia: Redesigning the State* (Canberra: Asia Pacific Press, 2003). For a thorough critique, see Gary F. Bell, "The New Indonesian Laws Relating to Regional Autonomy: Good Intentions, Confusing Laws," *Asian-Pacific Law and Policy Journal*, vol. 2, no. 1 (Winter 2001), pp. 1–44.

[67] Crouch, *Political Reform in Indonesia after Soeharto*, p. 94.

A radical decentralization was envisioned by the Team of Seven that pushed the legislation.[68] A great deal of power was devolved, except in foreign affairs, defense, monetary and fiscal policy, development planning, and religious matters. Not less than 25 percent of general revenue would leave Jakarta, 90 percent of it to districts and municipalities, 10 percent to provinces. Natural resource revenues would be divided between the center and source areas by a formula more generous to the regions than the previous arrangements had been. By 2001, some 2.4 million civil servants and control of governmental assets were to pass to the localities. Localities were to become far more important units of government than provinces were; the latter were to be confined to administering matters still within the purview of the central government and to managing cross-district problems.

It was clear early on that the problems of Aceh and Irian Jaya (later officially called Papua) would not be solved by a general devolution. Those two provinces later were the subject of separate laws that accorded them "special autonomy."[69] This was made possible by the earlier offer of special autonomy to East Timor, which rejected it, in favor of independence, in a referendum arranged by Habibie. Aceh then seized on the idea – which, in the Acehnese case, went back to the early 1950s – and after demands for independence were heard from Papua, it was offered special autonomy as well, for fear of a repeat of the departure of East Timor.[70] For the remaining provinces, dire predictions of chaotic breakdown were not fulfilled. Rather, autonomy seemed to defuse the discontent that had been growing in the regions. In the local elections that followed, many incumbents, especially those with military backgrounds, were replaced, often by civil servants.[71]

The federalist implications of the devolution were well understood by sitting politicians,[72] many of whom saw the new policy as a distasteful necessity. For that very reason, decentralization was subject to later

[68] F.N. 2:15, 2:155 (Team Tujuh members).

[69] Law no. 18 of 2001 on Special Autonomy for the Province of Nanggroe Aceh Darussalam; Law no. 21 of 2001 on Special Autonomy for the Papua Province.

[70] See Jacques Bertrand, *Nationalism and Ethnic Conflict in Indonesia* (Cambridge: Cambridge University Press, 2004), pp. 204–10.

[71] Malley, "Democratization and Regional Political Elites."

[72] F.N. 2:100 (a member of PAH-I). For some of the alignments on this issue, see Marcus Mietzner, "From Soeharto to Habibie: The Indonesian Armed Forces and Political Islam during the Transition," in Geoff Forrester, ed., *Post-Soeharto Indonesia: Renewal or Chaos?* (New York: St. Martin's Press, 1999), p. 99. A survey of MPR members conducted in 1999–2000 revealed that 65.1 percent approved of the regional

rethinking. It was a stroke of good fortune that the most potent opponents were, for the time being, neutralized: the army because its legitimacy was under attack, Megawati and Gus Dur by virtue of the fact that they and their parties were still outside parliament, and centralists in Golkar who were lying low to rehabilitate themselves for a new democratic dispensation. (Other Golkar people saw clear advantages to devolving power to regions in which the party already had strongly entrenched organization.) For the moment, there was a non-Javanese president who sponsored the Team of Seven. Ironically, it was a case of the old regime's being able to transform itself more completely and more quickly than a democratically elected successor might have done. This was one area in which reform moved very quickly.

THE EMERGING CONVENTIONS OF POLITICS

Compromise was the general watchword of this period, marked as it was by interparty cooperation. Because of Habibie's actions to assure free elections – including prohibitions on (pro-Golkar) civil servants who wished to participate in party politics – politicians were relieved of the need to oppose the sitting government at every turn.

The emerging norms of cooperation had several features. They were to have an impact after the 1999 elections.[73]

First, on fundamental issues, the parties preferred consensus to strict majority rule. Once again, this was a case of the continuing influence of earlier norms. Under Suharto's New Order, consensus decisions had been favored, with the critical difference that the consensus was to suppress antigovernment views. Now, the consensus was to produce a synthesis of various views. The norm of consensus colored the post-electoral process of constitutional change, as the large committee set up to propose amendments settled most issues by informal, interpersonal negotiation, rather than by open debate, let alone balloting.[74] During the entire constitutional

autonomy law, while 21.8 percent thought it did not go far enough and 7.1 percent believed it devolved too much power. Only 11.5 percent favored federalism for Indonesia. CETRO, "Result of Polling of MPR Members, Nov. 1999–Jan. 2000" (mimeographed, Jakarta, 2000).

[73] See Blair King, "*A Strong Presidency, Multipartism and Prospects for Democratic Consolidation: Not as Difficult a Combination in Indonesia?*" unpublished paper, Ohio State University, July 2002, pp. 3–4.

[74] F.N. 2:162 (a member of the committee).

process, only one vote was taken by the MPR, when it decided on a provision to exclude unelected functional group members, relics of Suharto's New Order, from the MPR.[75]

Consensus is a formal commitment: the MPR's Standing Orders now require that every effort be made to reach consensus.[76] In this, they follow the earlier Standing Orders of the authoritarian regime. Had the Habibie legislature opted instead for majority votes, dissensus might have overtaken the reform process early on. So, in this respect, too, following rules that had their origin in undemocratic practices produced – paradoxically enough – democratic results.

Second, an implication of proceeding consensually was that no formal opposition or leader of the opposition emerged in the legislative bodies, even after the 1999 election. The cabinets of both presidents chosen after the 1999 election consisted of members of many parties, particularly important party leaders who did not hold positions in the legislature. The representative character of cabinets impeded development of any doctrine of government and opposition. Offices were shared out more generally. After the 1999 election, the speaker of the MPR and speaker of the DPR came from different parties, neither the party of the president or vice president elected by the MPR, who themselves came from two different parties. Unsuccessful candidates for speaker became deputy speakers.[77] As late as 2000, a survey of DPR and MPR members revealed that most believed the president and vice president should be chosen from different parties. The Standing Orders of the MPR adopted in 1999 made no reference to either an opposition or to a leader of the opposition. They did, however, require every member to join a *fraksi* (faction; lit. fraction), a group of at least 10 legislators from one or more than one party.[78] Legislative business was done by consulting among the factions. Again, the fear of fragmentation was in evidence.

For a brief moment after the 1999 elections, there was a possibility of a formal divide between government and opposition. Megawati's party

[75] Denny Indrayana, "Indonesian Constitutional Reform 1999–2002: An Evaluation of Constitution-Making in Transition," Ph.D. dissertation, Melbourne University Faculty of Law, 2005, p. 223. See Constitution of Indonesia, art. 2(1). This was in addition to the earlier vote, forced by the PPP, to eliminate all unelected members of the DPR. As noted above, that vote had failed.

[76] MPR Decree No. II of 1999 on the Standing Orders of the People's Consultative Assembly of Indonesia, as amended by MPR Decree No. I of 2000 and MPR Decree No. II of 2000, art. 79.

[77] Pursuant to ibid., art. 25(2).

[78] Ibid., arts. 13(2), 15.

had a plurality of seats, but the MPR, holding the power to select the president, declined to choose her, opting instead for Abdurrahman Wahid. Most PDI-P leaders wished to go into opposition at that point. Then the party's supporters began to take violent action in the streets to protest the MPR's choice, whereupon Megawati decided, for the sake of peace, to accept the MPR's offer of the vice presidency instead.[79] The fact that the MPR chose the president allowed it to condition its choice on the president's commitment to a broadly representative cabinet, and when Megawati was selected as vice president the only party that might have stayed outside found itself inside. The peculiar conditions accompanying indirect election combined with PDI-P's fear of disorder to prevent the emergence of government and opposition.

Third, there was a certain fluidity among the parties. Amien Rais, leader of the large Muslim organization Muhammadiyah, flirted with several parties, then formed his own, but he was apparently willing to contemplate joining with the PDI-P of Megawati Sukarnoputri, and to take the second position, if that party wished to entertain a merger.[80] More compelling evidence was the growing closeness, after the 1999 election, of Golkar, the favored instrument of Suharto's regime, and Megawati's PDI-P, which had been strongly disfavored by that regime. The trend toward mutual understanding among politicians had been foreshadowed by the Ciganjur Agreement of November 1998, solidified by interparty cooperation in the pre-electoral reform period, and accelerated thereafter. As soon as a new president was elected in 1999, "leaders from all parties, including PDI-P, had their first post-election opportunity to interact with each other. In the process they created something like 'normal politics,' a substantial and enduring understanding of each other's intentions and capabilities in a democratic setting."[81] Many of those elected in 1999 had, after all, known each other decades earlier but had gone their separate ways during the long authoritarian period; now they renewed their acquaintance.[82]

[79] F.N. 2:85–86 (a PDI-P leader).

[80] F.N. 1:86. Cf. Angus McIntyre, *The Indonesian Presidency: The Shift from Personal toward Constitutional Rule* (Lanham, MD: Rowman & Littlefield, 2005), pp. 192–93. Early on, Amien also experienced a pan-Islamic temptation, according to an important Muslim leader who rejected the idea. F.N. 1:20.

[81] R. William Liddle and Saiful Mujani, "The Islamic Challenge to Democratic Consolidation in Indonesia," unpublished paper, Ohio State University, 2002, p. 30.

[82] F.N. 3:64 (a leading drafter).

These norms proved powerful. Gradualism and the strong preference for consensus inclined leaders to avoid divisive decisions. They waited for differences of opinion to abate. The process of constitutional amendment, therefore, took until August 2002 to complete. Other major institutional changes took even longer. Those who deviated from the path of consensus building were severely disadvantaged. When Megawati, leader of the largest party, acted as if she held a majority, she failed to be elected president by the MPR in 1999. When Abdurrahman Wahid, who was elected in her stead, acted in office as if the president were not the creature of the multiparty MPR, he produced an exceedingly hostile reaction that ultimately led to his removal.

Interparty cooperation in 1998–99 was facilitated by the differentiation of party clienteles. The roots of most parties lay in the *aliran*, or streams, of Indonesian society.[83] The support of some parties was based on one or another Islamic tendency and that of others was based on secular nationalism; some had rural bases, others urban; some were stronger in Java, others in the Outer Islands. The semi-ascriptive character of their core followings meant that the parties initially competed for clientele only at the margins, and this probably made their relations easier in the legislature. (The 2004 and 2009 elections, however, would show that the support of some parties was less solid than it seemed.)

Paradoxically, it also helped that the legislature was at the outset so undemocratically constituted, with most of the opposition parties outside. Until the 1999 election, majority rule was a sham. As we have seen, when Golkar threatened to use its Suharto-derived majority to enact the form of proportional representation it preferred (which would have used local governments as constituencies for lists), the other parties threatened a walkout. Having a formal power it could no longer exercise, Golkar relented, and consensus was preserved.[84] In a legislative body that aspired to democracy, majority rule was not possible when the majority's representatives were not in that body to begin with. Consensus thus made sense, but it also spilled over into the period after 1999, when elections made the legislature truly representative. At that point, there was no longer any choice, for on constitutional change there was, as we shall see soon, a veto group in the post-1999 MPR.

[83] *Cf.* Aris Ananta, Evi Nurvidya Arifin, and Leo Suryadinata, *Indonesian Electoral Behavior* (Singapore: Institute of Southeast Asian Studies, 2004), pp. 410–15.

[84] See note 36, above.

SOURCES OF PARTY PROLIFERATION

In the year between the fall of Suharto and the 1999 election, political leaders talked and parties formed. List-system PR with a low threshold created abundant incentives for small differences to be reflected in a multiplicity of parties. The three major preexisting parties did not succumb to the temptation to split. Golkar, PPP, and PDI-P had their factional differences, but they did not divide over them. It was a different story, however, with the new parties.[85]

In the traditionalist Muslim stream, Gus Dur founded PKB. Many traditionalists, however, stayed with the established PPP, which also had modernist support, and some others remained in Golkar. A variety of rivalries, personal, familial, and ideological, resulted in the formation of three other NU-related parties, one of which soon merged with the PPP and one of which was actually led by Gus Dur's brother and uncle. None of these anti-PKB parties would make a substantial showing in the 1999 election, in spite of their claims that the PKB of the liberal cosmopolitan Abdurrahman Wahid, who abjured state-imposed Islamic law and was willing to put non-Muslim candidates on his lists, was not really an Islamic party. What the splinter parties managed to do did, however, have some costs: they siphoned votes away from PKB at the margin.

More significant divisions were found in the modernist stream, where a major debate centered on whether to recreate Masjumi, the once-strong Muslim party of the early post-independence period. Masjumi had had both modernist and traditionalist followings until 1952, when NU left the party in the hands of modernist leaders up to the point of its forced demise in 1960, after Sukarno had established his Guided Democracy. In 1998, Amien Rais had contemplated leading a revived Masjumi, although he had also toyed with the idea of joining other parties. In the end, he concluded that a new Masjumi would be unable to gain more than 20 percent of the vote, and so he formed PAN, a

[85] In addition to interviews (F.N. 1:11, 19–22, 29, 73, 76, 115, 121), the most important sources for this section are Bernhard Platzdasch, *Islamism in Indonesia: Politics in the Emerging Democracy* (Singapore: Institute of Southeast Asian Studies, 2009), pp. 30–99; Marcus Mietzner, *Military Politics, Islam, and the State in Indonesia: From Turbulent Transition to Democratic Consolidation* (Singapore: Institute of Southeast Asian Studies, 2009), pp. 254–73; and Kuskridho Ambardi, "The Making of the Indonesian Multiparty System: A Cartelized Party System and Its Origin," Ph.D. dissertation, Ohio State University, 2008, pp. 121–37.

secular party that nonetheless retained some of his Muhammadiyah support. Within two years, PAN had lost much of its non-Muslim following. When Amien declined the invitation to lead the Masjumi revival, a prominent Muslim leader, Yusril Ihza Mahendra, founded PBB as an explicit revival of the old party, whereupon three other Masjumi clones also were formed. None of the three would receive as much as one half of one percent of the vote in 1999, and PBB would also fail to attract a mass vote.

Also in the modernist stream was Partai Keadilan, but its roots were in the university campuses, where Islamic revival work found fertile soil in student discussion groups. A party with strong grassroots organization, PK (and its successor, PKS) would have its electoral vicissitudes, but it would survive several election cycles.

The result of all this organizational fine-tuning was that Muslim parties, especially those in the modernist stream but also traditionalist parties, were more fragmented than were parties without explicit sectarian foundations. With their obvious agglomeration of interests, Golkar and PDI-P might sometimes lack ideological clarity, but neither was divided over fine points of doctrine. This feature would serve them well in the impending election.

Although the parties were far from uniformly represented across all of Indonesia's islands, none of them explicitly represented Javanese or Outer Island interests; the new parties and electoral laws would have made that difficult. And while some parties had more and others less well-educated and wealthy followings, no major party claimed a classically liberal or a socialist ideology. The several explicitly working-class parties that emerged would perform poorly at the polls. Golkar certainly represented military, bureaucratic, and business interests, and PDI-P conceived itself as the champion of the *wong cilik*, or underprivileged, but both made much broader claims to cross-class inclusiveness.

Party organization seemed to reflect, above all, the *aliran* or cultural streams of the 1950s, and to a considerable extent they did do so in 1999. Over the ensuing years, however, the Indonesian political institutions adopted during the reform period had a significant impact on cleavages, streams, and the willingness of politicians and voters to cross them. But, at the outset, there appeared to be a party for every cultural and religious taste – indeed, more than one for each. This was a key, perhaps even a precondition, to the growing fluidity of the system as it evolved later.

A LEGITIMATE ELECTION

With the new structures in place, all that remained to complete the transition to a new regime was to elect a new parliament and then for the MPR to elect a new president and vice president. With their newfound electoral legitimacy, these actors could then proceed to deal with constitutional change.

Of the 48 parties registered to run candidates, 21 won one or more seats in 1999, but the top six won among them 88.5 percent of the vote. The top four parties (PDI-P, Golkar, PKB, and PPP) won 79 percent of the vote, and the top two (PDI-P with 33.7 percent and Golkar with 22.4) won more than half the vote by themselves. These two were the most complex amalgams of groupings, the ones most resembling catch-all parties. Explicitly Islamic parties won only about a quarter of the vote given to major parties, a bit more if all parties that won at least one seat are counted, and about 36 percent if Amien Rais' PAN, with its Muhammadiyah roots, is counted as an Islamic party.[86]

TABLE 1. *Major Parties Represented in the DPR, 1999–2004*

Party Stream	DPR Seats (%)	Leader	Political Base
PDI-P	33.1	Megawati Sukarnoputri	Secular nationalist
Golkar	26.0	Akbar Tandjung	Secular; some Muslim support
PPP[a]	12.6	Hamzah Haz	Traditionalist and modernist Muslim
PKB	11.0	Abdurrahman Wahid	Traditionalist Muslim
PAN[a,b]	7.4	Amien Rais	Secular; modernist Muslim support
PBB[a]	2.8	Yusril Ihza Mahendra	Modernist Muslim
PK[a,b]	1.5	Hidayat Nur Wahid	Modernist Muslim

[a] PPP, PAN, PK, and PBB comprised the Central Axis.
[b] PAN and PK comprised the Reformasi *fraksi*.

[86] For convenient discussions, see Donald E. Weatherbee, "Indonesia: Electoral Politics in a Newly Emerging Democracy," in John Fuh-Sheng Hsieh and David Newman, eds., *How*

These results bear some resemblance to the 1955 results, when the top four parties won 77 percent of the vote and 28 parties won at least one seat, but in 1999 there was somewhat greater distance between the top two parties and the four others with significant seats than in 1955, when the four largest parties were clustered within a few points above or below 20 percent. In other respects, there were continuities with 1955. PDI-P's support came in areas that had given support to secular parties in 1955. Golkar and all the remaining major parties received support in areas that had earlier given support to religious parties.[87] Party support also had an ethno-regional element to it. Golkar did best in eastern Indonesia, where, as the former ruling party, it had superior organizational resources and where it won nearly half of all seats.[88] The PKB of Gus Dur ran strongest in east and central Java, while PAN performed better in Sumatra than elsewhere.[89] The results showed Indonesian voters to be significantly divided in their party preferences. The Islamic vote was particularly divided, for reasons already indicated,[90] while the votes of most secular nationalists, the Chinese, religious minorities, both Christian and Balinese Hindu, and religious syncretists went to the PDI-P and, to a lesser extent, Golkar.[91]

The distribution of seats was not perfectly in proportion to votes, not only because the election was by provincial lists but because Java and Bali were deliberately underweighted. Golkar and PPP, with their Outer Island support, were advantaged. PKB, with its geographically focused Javanese

Asia Votes (New York: Chatham House, 2002), pp. 255–81; R. William Liddle, "Indonesia in 1999: Democracy Restored," *Asian Survey*, vol. 40, no. 1 (January 2000), pp. 32–42. For a comparison of the performance of Islamic parties in 1955 and 1999, see Greg Fealy, "Islamic Politics: A Rising or Declining Force?" in Damien Kingsbury and Arief Budiman, eds., *Indonesia: The Uncertain Transition* (Adelaide: Crawford House, 2001), pp. 119–36.

[87] King, *Half-Hearted Reform*, pp. 129–34; Weatherbee, "Indonesia," pp. 258, 275. Indeed, Golkar proved to be a bit more Islamic in its voter base than might have been anticipated.

[88] See Sven Cederroth, "Traditional Power and Party Politics in North Lombok, 1965–99," in Hans Antlöv and Sven Cederroth, eds., *Elections in Indonesia: The New Order and Beyond* (London: Routledge, 2004), pp. 77–110, at p. 102.

[89] King, *Half-Hearted Reform*, pp. 153, 158.

[90] Gus Dur's PKB was especially affected by leadership schisms, losing seats to the PPP and to small rival parties.

[91] Endang Turmudi, "Patronage, *Aliran*, and Islamic Ideologies during Elections in Jombang, East Java," in Antlöv and Cederroth, eds., *Elections in Indonesia*, pp. 38, 60; Syamsuddin Haris, "Politicization of Religion and the Failure of Islamic Parties in the 1999 General Election," in ibid., pp. 61–76; Leo Suryadinata, *Understanding the Ethnic Chinese in Southeast Asia* (Singapore: Institute of Southeast Asian Studies, 2007), pp. 253–54. Some Catholic votes also went to PAN.

base, was seriously disadvantaged.[92] Provincial elections were held at the same time. In those, Golkar, with its widely spread support, did well. For that reason, in the MPR, with the addition of members indirectly elected by provincial legislatures, the total Golkar share of seats in the DPR was almost equal to that of the PDI-P.[93] In both the DPR and MPR, the two parties together held a majority.

Had the Team of Seven's original proposals been enacted, a hypothetical rerun of the 1999 election, assuming – dubiously – the same pattern of party voting, suggested that PDI-P would have won an absolute majority of 240 seats, while Golkar would have improved its share of seats and all smaller parties would have suffered losses.[94] PDI-P's passivity in deliberations about the electoral system – and the preference of most in the party for PR – proved to be a monumental strategic error, given its widely distributed support.

The results prevailing under the system that was adopted did not suggest a natural line between government and opposition. The path of least resistance was continuation of the norms of consensus that had grown up soon after the resignation of Suharto.

There had been considerable potential for an illegitimate election. Barred by Habibie from playing a political role,[95] currently employed civil servants might nonetheless have given support to Golkar, as they were accustomed to doing under Suharto. The complexity of the vote count under the largest-remainder form of PR that was adopted, in conjunction with a profusion of small parties, threatened to undo the results. So did the apportionment of seats to local winners under the district element added by the DPR to the PR system as a concession to the sensibilities that informed the Team of Seven's initial recommendations. But, despite the pitfalls, more or less acceptable results were reached in the end.

Civil servants generally stood aside and, by doing so, signaled that government machinery was not mobilized behind a particular result.[96] In

[92] The PKB was also hurt by competition from two splinter parties in the PKB stream that together won six seats.

[93] National Democratic Institute, "The 1999 Presidential Election, MPR General Session, and Post-Election Developments," NDI, Jakarta, November 28, 1999, pp. 5, 11.

[94] "Sistem Pemilu Yang Berbeda Akan Menghasilkan Hasil Pemilu Yang Berbeda" ("A Different Electoral System Would Produce a Different Result"), mimeographed, Jakarta, n.d.

[95] Presidential Decree no. 5 of 1999.

[96] See, e.g., Antlöv, "National Elections, Local Issues," p. 128.

any case, a good many Suhartoist local officials had been forced to resign in the year preceding the election; their successors were not inclined to the old ways. For a time, however, the electoral-system problems did threaten to undermine the election results.

Three-quarters of elected legislators won their seats by full quotas. In a province with, say, five seats and three parties winning, respectively, 51 percent, 33 percent, and 16 percent of the vote, the quota for victory is 100 ÷ 5. Under this method, the 51-percent party gains two seats with full quotas of 20 percent each and is left with an 11 percent remainder, while the 33-percent party wins one seat and is left with a 13 percent remainder. The 16-percent party wins no full-quota seats but has the largest remainder (16 percent) and wins the fifth seat on that basis.[97] But what if parties could combine their remainders, so that two smaller remainders could become the largest remainder? In the example given, the 51-percent party and the 33-percent party could combine their remainders in favor of one of their candidates, who would then have a larger remainder than 16 percent, leaving the smallest party with no seat.

The Indonesian election commission allowed such interparty agreements, called *stembus accords*, to be made. Because the regulations were promulgated just before the election, it was unclear which parties had filed valid stembus accords in advance. Moreover, some parties that had filed them wished to renege on them when a seat subject to a stembus accord in favor of a partner could have been won alone, on a largest remainder, by the party that had agreed to pool remainders with that partner. The election commission wavered on these issues but, two months after the election, abolished all stembus accords retroactively. As a result, some parties gained seats, and others lost them.[98]

As this delay in certifying results suggests, although the main outlines of the results were clear, there was some post-election confusion. The commission consisted of representatives of all 48 registered parties, which was useful as votes were cast and counted. Polling stations were run by party representatives and community leaders, and the ever-watchful eye of Suharto's government was no longer present. But representatives of small parties that fared badly in the election refused to agree to certify

[97] The examples are drawn from NDI, "The New Legal Framework for Elections in Indonesia: A Report of an NDI Assessment Team," Washington, DC, February 23, 1999, p. 17.

[98] "Post-Election Developments in Indonesia: The Formation of the DPR and the MPR," NDI and the Carter Center, Jakarta, August 26, 1999, pp. 2–3. The seat totals of 10 parties were affected by the abolition of stembus accords.

the overall results, hoping to pick up some seats by negotiation along the way. Finally, over their objections, Habibie validated the election. For the 2004 election, a new nonpartisan election commission was created, in order to avoid the delays caused by party representatives in 1999.

A particularly difficult issue in 1999 concerned the district feature of the electoral formula. It will be recalled that, while a party's share of the provincial vote determined the number of seats it received, the victory of individual candidates was to depend on how well they had performed in the locality to which they had been assigned. What this meant was that a best-performer from party A, which had won most of the seats in a province, could be assigned a seat from district X, even though a candidate from party B had won more votes in that district. This exceedingly confusing matter of assigning specific winners within parties threatened to perplex local electorates, whose favorites could lawfully be defeated, since the only party count that mattered was the provincial one.

This problem also interacted with the assignment of particular candidates to take up seats won on largest remainders. Parties were to have no discretion in assigning candidates to seats won on full quotas. However, by a rule very much at variance with the concept of a ranked list, parties were given discretion to fill seats won on largest remainders with any candidates on their provincial list. This, of course, could impair the aim of electing candidates with the best local showings, but the damage went beyond that. Once it was permissible to assign candidates to some seats after the election was over, the practice became profligate. Contrary to its rules, the election commission even allowed parties discretion in filling full-quota seats. In the end, some 97 of 462 elected DPR members – more than one in five – represented districts other than the ones to which they had been assigned before the election. Such practices had antecedents under the New Order. For example, in the 1997 elections, the PDI won only 10 seats in the provisional results but managed to negotiate an eleventh in the final tally.[99]

Central party leaders preferred to assign the candidates they favored, without regard to district-level performance. One party, PAN, moved as many as 15 candidates from one district to another. Two small parties actually switched candidates from one province to another, so desperate were they that their leaders sit in parliament. The PDI-P, criticized for nominating too many non-Muslim candidates, corrected that after the election by placing more Muslims in its winning seats than had actually

[99] Ziegenhain, *The Indonesian Parliament and Democratization*, p. 61.

won those seats.[100] (Even then, nearly 40 percent of PDI-P members of the DPR were non-Muslims.) Because the electoral commission was composed so heavily of party representatives, they could dictate the interpretation of the results. In this way, the district feature of the electoral system, from the beginning a dubious graft onto the list system, was more or less eviscerated.[101] The Team of Seven, with its predilection for constituency favorites, had lost again. Party leadership won.

In the light of these machinations, it is remarkable that the election was seen as fair and legitimate. Yet it was. A survey before the election showed skepticism about the process, but another after the election revealed strongly positive responses to questions asking about satisfaction with the way the election was conducted (88 percent), Indonesia's status as a democracy (89 percent), and the fairness of the count and results (between 83 and 90 percent, depending on the question).[102] It is easy to see why. The atmosphere of coercion under Suharto was gone, and parties had campaigned freely, sometimes even breaking restrictive rules.[103] The change was palpable. So, too, was the change in the composition of the DPR. Only 20 percent of its members had served in the previous DPR, and only 10 percent of the elected members were from the civil service or armed forces, down from 37 percent in the last Suharto-Habibie DPR.[104] Above all, perhaps, despite the last-minute shifts of candidates to seats, parties received more or less the share of seats they had earned at the polls.

[100] National Democratic Institute, "The 1999 Presidential Election, MPR General Session and Post-Election Developments in Indonesia," pp. 6–7.

[101] Benjamin Reilly, "Electoral and Political Party Reform," in Ross H. McLeod and Andrew MacIntyre, eds., *Indonesia: Democracy and the Promise of Good Governance* (Singapore: Institute of Southeast Asian Studies, 2007), pp. 41–54, at p. 46, put the result this way:

> [The Indonesian legislature] devised a party list, proportional representation system with 'personal vote' characteristics, whereby the vote spread in particular districts/municipalities (*kabupaten/kota*) within each multi-member electorate would determine which individual candidates would be elected. In theory, locally popular candidates who attracted a significant personal vote would thus increase their chances of gaining a seat from their party list. In practice, however, this provision proved almost impossible to administer, and was widely ignored by the electoral authorities.

[102] See King, *Half-Hearted Reform*, p. 100.

[103] For two different constituencies, see ibid., pp. 105–20; Antlöv, "National Elections, Local Issues," pp. 124–31. For a different perspective on the campaign, see *Far Eastern Economic Review*, June 3, 1999, pp. 20–22.

[104] National Democratic Institute, "The 1999 Presidential Election, MPR General Session and Post-Election Developments in Indonesia," p. 36, derived from figures in *Kompas* (Jakarta), October 1, 1999, p. 15.

Only six parties won the ten seats required for eligibility to run candidates in the next election unless they merged with others. Fragmentation there surely was, but it was not so great as to spoil prospects for further reform. (The effective number of parties was 4.72, large but not unprecedented for a multiparty democracy.) Equally important, because of the profusion of parties, neither the Muslim–secular nationalist cleavage nor any other was so blatant and clearly drawn in party alignments as to augur polarization. Rather, the results produced multipolarity in the legislature, and that laid the foundation for cooperative politics. The first tests had been passed.

STEP BY STEP

The 1999 elections created a great paradox. For the first time in four decades, a freely elected government sat in Jakarta. It possessed enough legitimacy to undertake constitutional reform. But, because Habibie's preferred sequence of elections before constitutional change had prevailed, the government that took office in 1999 found itself working within the structures and incentives of the bizarre 1945 constitution. That document was replete with strong and possibly supreme powers for its supralegislature, the MPR, on the one hand, and strong presidential power that had underpinned Sukarno's and Suharto's authoritarianism, on the other. Enjoying its newfound legitimacy and strongly averse to the sort of independent executive power that had made possible the New Order dictatorship, the MPR insisted on its prerogatives. Because it left inapt institutions in place, the gradual transition at first placed the whole enterprise of constitutional change in jeopardy.

The preference for proceeding by consensus carried over to the process of constitutional amendment after the election. But, on many critical issues, there was no consensus. Megawati's PDI-P, the plurality party – or, more properly, one large faction of the party – was inclined to prefer no serious alteration of the 1945 constitution at all. The constitution was identified with Indonesian nationalism, and the PDI-P was firmly in the secular nationalist camp. The dominant position of the party at the outset was that the constitution did not need amendment. "I had to fight the old guards who believed the 1945 constitution was inherited from Bung Karno [Sukarno], and there was no need to amend it," a prominent PDI-P legislator recounted years later. "I tried to convince Ibu Mega [Megawati] that any amendments will not lose the spirit of the old constitution and will not even discuss the preamble, which had *pancasila*

and the principle of *negara persatuan* [the unitary state]." Even at the end of the reform process, he continued, some PDI-P people, particularly those with an old PNI pedigree – that is, those attached to the original, secular, anticolonial Nationalist Party – were not convinced that the constitution needed to be changed. Many feared that the old issues of the 1950s, including federalism, parliamentarism, and the role of Islam, would be reopened. For them, "It's always back to the '50s," he concluded.[105]

It was not that Megawati herself was necessarily opposed to any change in the constitution. As a leading drafter from her party recounted, the old guard from the PNI wished to protect the Sukarno legacy, but he realized, after "intensive" talks with the PDI-P leader, that she was not as concerned with that legacy as she was with keeping the party together.[106] In its resistance to constitutional change, the PDI-P was joined by the army and police, which were still represented in the MPR, and by other nationalists, all of whom were particularly fearful that Islamic parties might threaten the secular foundations of the state if the 1945 constitution were open to wholesale revision.

Amending the constitution required a two-thirds vote of MPR members present.[107] Megawati's PDI-P alone held more than a quarter of the total seats, elected and appointed. With support from armed forces members and other nationalists, there were plenty of votes to block any change that was proposed. (Interestingly, at the end of the constitutional reform process, the requirement for amending the constitution was reduced to a simple majority.) Behind the studied desire for consensus, couched in the alleged Indonesian cultural proclivity for unity rather than division, lay the hard reality that constitutional skeptics could veto proposals. In the background to consensus, in short, was the possibility of stalemate.[108]

There were other reasons cited for proceeding step by step. There was a sense of crisis; the country was in a dangerous period, and there was a need to proceed cautiously and avoid radical changes.[109] DPR members behaved cooperatively, because they did not wish to miss the opportunity

[105] F.N. 3:94–95, 96.
[106] F.N. 3:64–65.
[107] 1945 Constitution of Indonesia, art. 37, modified by the Fourth Amendment, August 17, 2002.
[108] For the threat of deadlock from those who feared the nationalist heritage and the secular state were in danger, see, e.g., *Jakarta Post*, July 4, 2002; August 2, 2002; August 5, 2002.
[109] F.N. 2:101 (a leading PPP member of the drafting committee).

to defeat authoritarianism.[110] Acting on sharp differences of opinion carried risks for the democratic project.

Lacking consensus, reform proceeded very slowly over the ensuing years. Contentious issues were put off. Deadlines were extended. Problems were addressed only seriatim as agreement crystallized around particular solutions. In these ways, the initial decision to proceed gradually produced yet more gradualism.

The elections revived and risked relegitimizing the old institutions, with their new incumbents. The old rules included exclusive power in the MPR to amend the constitution, and the new MPR, chaired by Amien Rais, therefore took firm control of the amendment process, even as the former dysfunctional institutions survived to make the whole enterprise proceed inefficiently and, on occasion, dangerously.

Anyone predicting the outcome at the time of the 1999 elections would have been less than sanguine about the scope and coherence of the reform likely to emerge from a slow, step-by-step process conducted under the constraints of the bizarre 1945 constitution. Yet what would emerge five years later was a system wholly transformed. It was to be a reform *of* the insiders, *by* the insiders, but not entirely *for* the insiders.

[110] F.N. 2:96 (a leading PDI-P member of the drafting committee).

4

A Game of Inches

The long process of constitutional change that began in 1999 may have been fraught with the danger of breakdown. Yet it had discernible benefits as well as costs.

On the one hand, there were repeated opportunities to revisit previous decisions. Ordinarily, midcourse correction, a standard feature of engineering solutions to redress system failures, should they occur,[1] is very difficult to build into political institutions, because interests so quickly congeal around whatever arrangements are adopted. In this case, however, many solutions were rethought along the way; and, as I have noted earlier, several important preferences of major actors were turned around completely. In this long process, several untenable arrangements were altered. Moreover, the consensual character of the changes meant that no one who was on the inside – and that includes the armed forces – could easily turn against the constitution later. This was a substantial advantage. If everyone had not been brought along, the new constitution might well have been vulnerable to an appeal to a cynical public that it was a put-up job designed to perpetuate the preexisting elite in new constitutional clothing. This is another way in which Indonesian decision makers traded off the benefits of a quick constitutional reconstruction to gain the benefits of peace and, ultimately, the consent of the public.

Because the process of constitutional change was so protracted, Indonesian leaders also traded off their ability to attend to the economic problems that had provided the opportunity to depose Suharto. During the period in which they were preoccupied with constitutional change, there

[1] See Henry Petrosky, *To Engineer Is Human* (New York: Free Press, 1985).

was some success in macroeconomic stabilization, but foreign investment, exports, and rates of economic growth were too low to provide employment for new entrants into the work force. By 2002, newspapers were full of interviews with working people about the irrelevance of the constitutional process to their daily needs. Surveys indicated that economic conditions were uppermost on the mind of the public.[2] Protests by farmers and factory workers were common. By 2004, half the population still lived on less than U.S. $2 a day. Indonesia's endemic corruption had not been brought under control and, by some estimates, had grown. The political crisis had passed, but the economic crisis had not.

Costs also flowed from the fact that the 1945 constitution placed the MPR in firm charge of the amendment process, able to keep other potential participants at arm's length. Even though the MPR ultimately corrected its own anomalous constitutional status, there was something of a pro-incumbent bias in aspects of its work from 1999 to 2004. Furthermore, the process of seriatim change could have meant that the product was the sum of whatever pieces could be agreed at any one moment, multiplied by the total number of such moments over the years.

As we shall see, the framers of the new provisions opted for a directly elected president possessing a majority mandate in a separation-of-powers regime, but with a legislature elected by a system highly unlikely to reproduce the president's majority in that branch. The habit of legislative initiative, which grew considerably from 1999 to 2004 as a result of the MPR's amendment powers, the conflict with President Abdurrahman Wahid, and the lassitude of his successor, Megawati – the president's office played little or no role in the whole process of constitutional change – did not prepare the legislature for allowing a majority-supported president what such a president might reasonably wish: to seize the electoral mandate and take strong policy initiatives. Beyond that, the norm of consensus in a fragmented legislature suggested an even greater likelihood of frustration of any such initiatives that might emerge. The new system certainly did build in checks and balances.

To appease ethnic and regional sentiment, the framers confirmed and gave constitutional status to the radical devolution of power begun in 1999, but the party and electoral laws they enacted made it difficult for devolved governments to be run by locally autonomous political parties.[3] One set of

[2] Page Johnson Tan, "Anti-Party Reaction in Indonesia: Cause and Implications," *Contemporary Southeast Asia*, vol. 24, no. 3 (December 2002), pp. 484–509, at p. 498.

[3] As we shall see, a single exception was made, for Aceh.

provisions was undermined by another. The second house that was created, a regional chamber, was also unlikely to represent the interests of devolved authority granted earlier.

Not all of this was the product of piecemeal consideration of issues and the sequence of events. Some was simply the result of conflicting impulses: the desire to accord local autonomy offset by the fear of national disintegration, for example. But many contradictions did proceed from the nature of the seriatim process. To compensate for the subordination of devolved governments to national political parties, elections for the second house created to represent the provinces, the DPD, were supposed to be conducted as contests among individuals without party affiliations, whereas the preexisting disposition, manifested in the party and electoral laws for the 1999 election and reaffirmed in 2002–03, was to be exceedingly stringent in limiting ballot access to well-established parties. It is difficult to imagine a quarantine between elections for the two houses. Personalities are important in DPD elections, but so are party identifications of candidates. Similarly, as we shall observe, the provisions adopted for a presidential runoff election can undermine the incentives of the formula for the first round that was adopted earlier.

As I have already mentioned and as I shall show in greater detail, the incremental method of constitutional reconstruction assuredly produced results different from those that would have followed from a single-shot process, whether it had involved an external body such as a commission or had been conducted by the MPR itself. This we can infer from a comparison of where constitutional issues stood initially with where they ended up. Several of these unexpected changes I have already enumerated, but none was more profound than the changes ultimately wrought in the constitutional status of the MPR itself. It began the reform period with greatly enhanced powers, which it reinforced along the way, but ended it with greatly circumscribed powers. Some of its former powers were rendered irrelevant, while others were transferred to a newly established constitutional court. The lengthy process was responsible for this transformation.

The coherence of the resulting package is far from perfect, and some of the new institutions, we shall see, have produced unanticipated consequences. But there is no evidence to suggest that the fit of the parts is qualitatively less coherent than it would be had the constitution emerged from a single set of proposals that were then subject to the usual process of legislative bargaining, as they typically are when a commission's draft is subject to legislative approval. In the Indonesian case, the sequencing of

change, rather than the divergent preferences of relevant actors, expressed simultaneously, produced a mixed set of institutions.

CONSTITUTIONAL HEADWINDS

The omens for constitutional change were scarcely felicitous. There were at least three major sources of difficulty.

The 1945 constitution was hastily written and thoroughly contradictory. As we have seen, it was to have been amended six months after its adoption, but it was not. That constitution gave "sovereignty" to the MPR in article 1 and "government power" to the president in article 4. The same ambivalence was carried over in the accompanying Elucidation of its provisions. Even the lawmaking power was not clearly lodged in the DPR, and while the president was not to be accountable to the DPR, he was to be "subordinate and responsible to" the MPR,[4] most of whose members also sat in the DPR. The MPR consisted of the DPR members, including the 38 unelected military members, as well as 130 representatives chosen by the 26 provincial assemblies and 65 representatives of so-called functional groups. The MPR possessed an open-ended power to issue decrees binding on the president as well as to choose and, if need be, unseat the president.[5] Under various circumstances, the constitution was conducive to either a parliamentary or a presidential regime and had been used to underpin decades of authoritarianism.

Constitutional drafters of all parties, including PDI-P, understood how odd the 1945 document and the bodies it created were,[6] but those in the PDI-P who had a strong aversion to making major changes pulled the others back.[7] This conservatism was odd, perhaps, because the constitutional status quo that the PDI-P leader Megawati endorsed had, as we shall see, deprived her of the presidency, whereas some of the most likely changes, such as direct election of the president, might well have inured to the benefit of Megawati and her party. Here, as in the case of

[4] "Elucidation of the Constitution" in the 1945 Constitution of the Republic of Indonesia (Jakarta: Department of Information, 1995), p. 23.

[5] See Blair King, "The Retention of a Paper Constitution and the Prospects for Democratic Consolidation in Indonesia," paper presented at the conference on "Consolidating Indonesian Democracy," Ohio State University, May 11–12, 2001, pp. 9–11.

[6] Here I am drawing on interviews with two prominent PDI-P leaders who were involved in the constitutional revision process. F.N. 2:83–87.

[7] According to an authoritative account by one who "talked intensively with Mega," F.N. 3:64–65, she was concerned with keeping her party together in the face of "old guard" elements from her father's PNI, who were averse to constitutional change.

first-past-the-post elections, the party failed to act in its own interest. But the PDI-P attachment to the 1945 constitution derived not only from its nationalist origins but from a current obsession as well: the party feared opening what it saw as a Pandora's box, particularly if that provided an opening for Muslim parties to alter the secular character of the constitution. Although Golkar and several smaller parties were surprisingly open to a new constitution, the PKB of Abdurrahman Wahid shared some of PDI-P's risk aversion. The PDI-P and its allies had, among them, sufficient votes to defeat constitutional amendments. So the first problem for constitutional change was a strange constitution that had some powerful adherents.

A second source of difficulty for reform was the revived legitimacy of the MPR, most of whose members had now been chosen in a free and fair DPR election. Soon after the 1999 election, the MPR passed the First Amendment to the constitution, which gave legislative power to the DPR (the clause had previously given the president "power to make statutes with the agreement of the Dewan Perwakilan Rakyat"[8]), clarified the appointment power of the president, and limited presidential and vice presidential terms to two.[9] In the year or more that followed the 1999 election, legislators were determined to reverse the presidential supremacy of the previous four decades. Hence the MPR, a body that formerly had met only every five years, now scheduled annual sessions and seized on its constitutional status as the highest state institution, the repository of sovereignty.[10] In early MPR discussions, there was much emphasis on reviewing presidential performance and on the ultimate function of impeachment, even the possibility of a vote of no confidence in lieu of more stringent standards for impeachment and removal. The MPR was determined to be active in overseeing the executive and assuring that the

[8] The 1945 Constitution of the Republic of Indonesia, art. 5(1). The Bahasa Indonesia version reads: "Presiden memegang kekuasaan membentuk undang-undang dengan persetujuan Dewan Perwakilan Rakyat."

[9] The First Amendment to the 1945 Constitution of the Republic of Indonesia, October 19, 1999, art. 7. Hereafter I refer to the amended constitution simply as "constitution" but to specific amendments by their number, as in this note, but with a shortened reference to "the 1945 constitution." The unamended constitution is also referred to as "the 1945 constitution."

[10] "We all agree," said a PPP leader, that "the MPR should be the highest institution." F.N. 2:148. My notes from this period are filled with references to the prevailing parliamentary assumptions. See also King, "The Retention of a Paper Constitution and the Prospects for Democracy in Indonesia," p. 11.

president implemented the Broad Outlines of State Policy, a document periodically issued by the MPR.

Relations with the president began to be based on curious assumptions. The DPR, with its power of interpellation, which allowed it to summon the president for questioning, was to be the daily supervisor of government. The president, however, had no power to dissolve the DPR and appeal to the electorate. The MPR was also to be entrusted with the power of judicial review of laws for constitutionality, leaving the Supreme Court with judicial review of government regulations alone. All of these assumptions and actions marked "a firm shift of power towards the legislative branch."[11] (The legislative branch, of course, included both the DPR and the MPR, for the MPR was merely an enlarged DPR in full constitutional dress, so to speak of one was often to speak of both, depending on exactly which legislative muscles were being flexed.) The MPR was basking in its revived authority, with its source in the 1945 constitution, and seeking to enhance its powers. This did not augur an easy process of constitutional renovation.

Even as the legislature was pulling more power to itself, aided by a committee it had created to revise its Standing Orders, another committee it had created to review the constitution was beginning to have different ideas. The problem was that its first efforts were weak and halting. This was the third source of delay.

TENTATIVE FIRST STEPS

Late in 1999, the MPR's Badan Pekerja, or Working Body, had formed two ad hoc committees, one to work on amendments to the constitution – and not to rewrite it – (Panitia Ad Hoc I, or PAH I) and one to draft MPR decrees, including Standing Orders for legislative bodies (Panitia Ad Hoc II, or PAH II). PAH I consisted of 47 members from all *fraksi*[12] and was chaired by an ex-Golkar legislator, since the previous year a PDI-P man. PDI-P and Golkar had the largest delegations, 12 members each on the committee, which began its review of the constitution at the end of 1999. Like the MPR, the committee decided to proceed by consensus, moving from the opinions of individual members early on to the consolidated

[11] Andrew Ellis, "Preparations for the MPR Annual Session: New Draft MPR Decrees," NDI, Jakarta, August 1, 2000, p. 4.

[12] Interestingly enough, PAH I had an antecedent in the Konstituante, a Panitia Persiapan Konstitusi (Preparatory Committee on the Constitution), which also consisted of members of all factions. The Konstituante is discussed in Chapter 1, above.

opinions of *fraksi* at a later stage.[13] PAH I agreed to retain the preamble to the constitution and the office of president, but without making any hard choices about how a presidential system would function in the new conditions. Beyond this, there was little PAH I could agree on.

There were, it was said, "two [different] spirits" in PAH I.[14] Golkar members and members from most Muslim parties seemed to want a wholly new constitution, whereas most PDI-P and PKB members – the latter Muslim party had ties to the nationalist stream – were much more cautious. Prominent leaders of the nationalist camp wondered about the unforeseeable, far-reaching effects of proposed changes and about the lack of preconditions for them.[15] If there were direct election of the president, one legislator wondered, would there first need to be a two-party system, in order to produce a legitimate president with more than, say, a 30-percent mandate? If there were to be judicial review, what norms would apply? The 1945 constitution was, after all, more mechanical than normative, and many members did not want to create a new bill of rights. Serious questions of this kind reinforced an inclination not to change the entire 1945 constitution. But support for and opposition to major constitutional change was not perfectly drawn along party lines: some PDI-P people wanted considerable constitutional change,[16] and some modernist Muslims were wary of it.[17]

The first crack at an amended draft constitution, largely the reflections of a prominent member of PAH I, departed little from the existing constitution, except perhaps to render it more explicitly antipresidential, almost parliamentary. The president, elected indirectly by the MPR, would be "accountable" to the MPR and could be removed by it if it rejected his periodic accountability report for any reason. As in the past, the MPR would enact the Broad Outlines of State Policy, binding on the president, who would also appoint a prime minister and cabinet. (There was no specification of the respective duties of these various officials.) The president and vice president would be nominated by the party which had

[13] F.N. 2:94 (an exceedingly influential PAH I member). PAH I's views on the MPR's powers evolved gradually. Even in the weeks before it reported to the MPR on August 2, 2000, it had been entertaining retention of some MPR powers it then abandoned. It was particularly ambivalent about allowing the MPR to have a vote of no confidence in the president. Andrew Ellis, "Amendment of the 1945 Constitution," unpublished memorandum, Jakarta, July 13, 2000.

[14] F.N. 2:77 (several Golkar members of PAH I).

[15] F.N. 2:83–85 (a leading PDI-P member of PAH I).

[16] F.N. 2:85–87 (a prominent PDI-P leader).

[17] F.N. 2:98–101 (a prominent PPP member of PAH I).

won the majority of votes in the general election and would be deemed elected if they gained majority support in the MPR. No consideration was given to the probability that no party was likely to gain a majority of votes in the general election or to the procedure for electing a presidential ticket in the event no ticket was able to gain majority support in the MPR. Apart from the addition of a second house to represent the provinces, this was a very timid first try, beset with fundamental ambiguities and inclined toward a powerful MPR.[18]

This was how things stood as late as May 2000. By August, PAH I had begun to understand the difficult choices it confronted. In the draft it then circulated, sovereignty would remain with the MPR, which would consist of the DPR plus a regional house with weak powers and some unelected armed forces members. One possibility explicitly addressed was direct election of the president and vice president. In that case, there would, according to one option advanced, no longer be a need for the MPR to issue the Broad Outlines of State Policy, for these would implicitly come to the president from the electorate. Neither, according to one option, would the MPR need to evaluate a presidential accountability speech. The MPR would retain power to amend the constitution and to dismiss the president, but now only for violation of law or other serious misbehavior, not simply because the MPR lacked confidence in the president. And, in one version, the misconduct would first have to be determined by a decision of a constitutional court to be established. In this draft, the MPR was beginning to be seen as merely an ordinary legislative body.[19]

Party differences were clearly visible in the four alternatives put forward to elect the president and vice president. Two of these provided for the direct election "on one ticket directly by the people." One option, a Golkar-Reformasi compromise,[20] provided for nomination of presidential tickets by the MPR before election, using an electoral college that would underweight the votes of Java and Bali.[21] Another variant, propounded by PKB, did not involve the MPR in nominating candidates and simply

[18] "Draft Amendments to the Constitution of the Republic of Indonesia," unpublished document, Jakarta, n.d., May 2000.

[19] "Draft Amendment," PAH I Proposals, Jakarta, August 2, 2000, mimeographed.

[20] Reformasi was the *fraksi* composed of Amien Rais' PAN and PK, the small Islamic-based Justice Party.

[21] Golkar had wanted completely direct elections, whereas Reformasi had favored MPR involvement, perhaps because PAN was skeptical of Amien Rais' ability to win a fully popular vote. F.N. 2:179–82 (a confidant of Habibie who kept close tabs on the proceedings).

provided for plurality popular election. PKB was probably looking toward election of its sitting president, who was already unpopular with the MPR. A third option, endorsed by PDI-P, had the MPR choosing the president and vice president from among the two tickets nominated by the two parties with the largest number of votes or seats (it was not clear which) in the general election. A fourth possibility, favored by the unelected functional representatives in PAH I, had the MPR choosing the president and vice president by majority vote from among all tickets nominated by parties or, failing an MPR majority, from among the tickets nominated by the two parties with the largest share of votes in the general election. Each of these ideas had formidable problems attached to it – some because they made the MPR the kingmaker in what was to be a presidential system,[22] one because it provided for a mere plurality winner in a fragmented party system and could therefore produce a president with a very weak mandate.

For the time being, only two variants had enough support to survive for further discussion: the Golkar-Reformasi proposal for MPR nomination of two tickets to be put to the electorate and the PDI-P proposal for the reverse.[23] Golkar, of course, was stronger in the Outer Islands, which is why its electoral college proposal was unacceptable to PDI-P. But PDI-P people also feared a direct election in which winners and losers were defined by ethnicity or religion and the disorder that might ensue from such a result.[24]

Although the August draft reflected party dissensus, it was the first step toward constitutional normalization. In particular, it was the first public articulation of a reduced role for the MPR. Still, there was a long way to go in thinking about electoral systems and the structure of government. There was more thought given to the mechanics of reducing the field to two tickets than there was to the role of a president in a fragmented polity or the impact of the mode of election on the party system; and it remained unclear whether Indonesia's governmental system, denominated presidential, would be in fact more parliamentary. Yet the more options were discussed,

[22] The implications for reelection of a sitting president would be ominous. The president's first term would be served in the shadow of the MPR's power, and the president would be beholden to the MPR.

[23] For the background, I am relying on interviews in Jakarta. F.N. 2:76–78, 91–93, 94–97, 98–102, 125–28, 129–33, 136–37, 138–40, 141–43, 147–49, 150–53, 155–58, 159–64, 168–72. I also benefited from conversations with Andrew Ellis and from a private meeting that CETRO had convened with members of PAH I in Jakarta on May 11, 2000, in which members expressed their views on these issues. F.N. 2:44–53.

[24] F.N. 2:168–72 (a leading PDI-P member of PAH I).

the more likely it was that the widespread strong reluctance to make significant changes in the constitution might be overcome.

PAH I's report was debated in an MPR commission, where some agreements reached in PAH I were undone, but what remained became the Second Amendment.[25] Regional autonomy was accorded constitutional status. Provincial legislatures and legislatures below the provincial level were to be directly elected. The DPR was to be fully elected by 2004; the MPR would contain armed forces representation until 2009 at the latest.[26] The DPR also became an ordinary legislative body, with budgetary and oversight responsibilities. For the first time, bills would become law after 30 days, even if the president failed to sign them. And a variety of human rights were enumerated.

Left in place for the time being were the MPR's powers. It retained sovereignty, the power to elect the president and vice president, and the power to compel and hear the president's accountability speech. If anything, MPR powers were augmented. By an MPR decree,[27] the Badan Pekerja (legislative Working Group) was made permanent and was confided the task of reviewing the implementation of MPR decrees by the executive. If a presidential accountability speech were rejected at the end of the MPR's five-year term, the president could not stand for reelection. As we shall observe shortly, this provision codified the practice of a year earlier, when Habibie's accountability speech was rejected. An accountability speech could also be rejected at a specially called session during the MPR's term. In that case, the president would have a right of reply. If the reply were then rejected, the president could be removed by the MPR.[28]

The upshot of these powers, and of a decree formalizing the MPR's jurisdiction to review the constitutionality of laws passed by the DPR,[29] was to shore up the legislative bias of the regime at the very moment direct election of the president was beginning to be debated in earnest and to enhance the powers of the anomalous supralegislature just as the normalization of governmental structures in Indonesia was becoming a serious

[25] Second Amendment to the 1945 constitution, August 18, 2000, art. 18.

[26] Some Golkar and PKB legislators in PAH I professed to be dismayed by its recommendation of continued armed forces representation. *Straits Times* (Singapore), August 10, 2000.

[27] MPR Decree no. II of 2000.

[28] Interestingly, in view of PDI-P's strong support for election of the president by the MPR, the party played a key role in preventing the MPR from adopting a rule allowing it to turn an annual meeting into a special session that could result in removal of a president. The PDI-P did not wish to provide the MPR with more power than it had. *Jakarta Post*, August 4, 2000.

[29] MPR Decree no. III of 2000, art. 5.

possibility.[30] Some influential legislators foresaw abolition of the MPR or an MPR that survived as nothing more than a joint session of the DPR with the new regional house, but others imagined an MPR that remained the highest state institution in order to avert presidential dictatorship.[31] Many on the inside still preferred few changes to the constitution; some, none at all. This reluctance would be manifested repeatedly over the next two years. Outside the MPR, civil society organizations demanded a thoroughly new constitution. What happened subsequently is that the will of those on the outside was done by those on the inside, in spite of themselves, as they became increasingly entangled in the process they had created, while those on the outside failed to credit the thoroughness of the constitutional reform.

GUS DUR: OBDURATE BUT NOT DURABLE

Following Sukarno, Suharto, and Habibie, Indonesia's fourth president, Abdurrahman Wahid, remarked that, of the four, one was crazy for women, one was crazy for money, one was just crazy, and one (he himself) drove everyone else crazy. Given the MPR's experience with Indonesia's presidents, it is remarkable that constitutional change proceeded at all. Constitutional debates were heavily colored by relations between the MPR and post-Suharto presidents.

Despite his decisive turn to reform, B. J. Habibie was never truly popular even in his own party. Beyond that, he was tainted by alleged involvement in a scandal involving Bank Bali funds said to have been siphoned off to Golkar-connected people for election campaigning in 1999 and by his unilateral grant of a referendum to the people of East Timor in the same year. The referendum produced a vote for independence that many in Indonesia thought threatened national integrity. In October 1999, Habibie gave an accountability speech to the MPR. It was ultimately rejected, 355–322, in part by votes from a faction of his own party, whereupon Habibie withdrew his candidacy for the presidency and retired from politics. This sequence followed the script performed by Sukarno when he was ousted 32 years earlier, and it helped lay the foundation for the MPR decision to make this no-confidence practice

[30] For a full discussion of the 2000 amendments and MPR session, see Andrew Ellis and Blair King, "Indonesia's Bumpy Road to Constitutional Reform," NDI, Jakarta, September 2000.

[31] F.N. 2:136, 148–49 (an influential member of Golkar and one of PPP).

binding. Abdurrahman Wahid was then chosen president. The protracted conflict that ensued between Gus Dur and the MPR impaired his ability to defend presidentialism and hardened the MPR's attachment to its powers. Who could have guessed at that point that the MPR would eventually create a separation-of-powers regime with a separately elected president?

Because the PDI-P had won a plurality of seats in the 1999 election, Megawati had assumed herself to be the leading candidate to be president,[32] and she took no steps to forge a winning coalition. Instead, by encouraging her supporters in the MPR to vote against Habibie's accountability speech, she had killed the candidacy of the one opponent she would almost certainly have defeated for the presidency.[33] Amien Rais had by then cobbled together a so-called Central Axis, consisting of three Muslim parties and his own PAN. This was a bloc able to hold its own for a time against the larger Golkar and PDI-P. Many Muslim politicians had reservations about Megawati, because she was a woman and a secular nationalist. The Central Axis cast about for alternatives, but several declined. One who was more than acceptable was Gus Dur. A liberal Muslim, he was the first choice of few but the second choice of many. His PKB had been aligned with the PDI-P – he and Megawati had had a rather deep understanding[34] – but the Central Axis plus PKB and some in Golkar and in the military constituted a winning combination. And so Amien and Gus Dur, old enemies, negotiated to separate the PKB leader from Megawati, his old friend, whom he then defeated in a two-way contest.[35]

[32] Which she would likely have been in a three-way, plurality election in the MPR. There had earlier been considerable uncertainty about whether a majority or mere plurality was required to elect a president, but the MPR had decided at the 1999 general session on a series of runoffs to choose a president by a secret-ballot majority vote in the event there were more than two candidates. See National Democratic Institute, "The 1999 Presidential Election, MPR General Session, and Post-Election Developments," NDI, Jakarta, November 28, 1999, p. 16. For the background, see Kevin Evans, "The Presidency, National Assembly and Regional Parliaments," unpublished paper, Jakarta, August 12, 1999, p. 5; National Democratic Institute, "The New Legal Framework for Elections in Indonesia: A Report of an NDI Assessment Team," NDI, Jakarta, February 23, 1999, pp. 10–11.

[33] Marcus Mietzner, "The 1999 General Session: Wahid, Megawati and the Fight for the Presidency," in Chris Manning and Peter van Diermen, eds., *Indonesia in Transition* (London: ZED Books, 2000), pp. 39–57, at p. 50.

[34] F.N. 1:19–20, 22 (a major PKB leader).

[35] Several days preceding the presidential vote, the PDI-P–PKB coalition had been on the losing side of several minor votes that proved the potency of a Golkar–Central Axis combination. Immediately thereafter, Gus Dur, who had been viewed as the leading candidate for speaker of the MPR, instead supported Amien Rais for the job even against Gus Dur's own PKB chairman, who was also a candidate and who was supported by PDI-P.

Immediately, he invited her to join him as vice president. With PKB support, Megawati was then elected over the PPP leader, Hamzah Haz.

The selection of Gus Dur was the end product of a series of failed alignments and other fateful decisions. When Amien Rais formed his political party, PAN, he constructed it, despite his strong modernist Muslim support, as a secular party, leaving room for others to create parties occupying fractions of the modernist space and so fostering intra-group electoral rivalries. Habibie even represented Golkar as a modernist Muslim party,[36] thereby heightening the distaste for him felt by much of the military and by the PDI-P. Amien had proposed a coalition with Megawati's party but been rebuffed and so turned to Abdurrahman Wahid, with his reputation as a bridge builder,[37] as the Central Axis' preferred candidate. When Habibie gave his accountability speech, PDI-P legislators, armed forces representatives, acting on instructions from their commander,[38] and 30 Golkar members of the MPR all voted against it. Had those 30 voted for it, Habibie would not have withdrawn his candidacy; indeed, all it would have taken was 17 votes, as Habibie's speech was rejected by a margin of 33. In that case, Habibie's votes would not have gone to Gus Dur, and Megawati would have emerged as the likely winner of the presidential contest.[39]

Through tactical incompetence, this was not to be. Megawati appeared to think that she needed no allies and, as the plurality winner of the legislative elections, could, or at least should, defeat any other candidate in a head-to-head contest in the MPR.[40] She was, however, not the Condorcet winner[41] and (in order to calm her followers) had to settle reluctantly for the vice presidency.

This break with PDI-P foreshadowed the Amien–Gus Dur deal for the presidency days later. For a fine account, see National Democratic Institute, "The 1999 Presidential Election, MPR General Session, and Post-Election Developments," NDI, Jakarta, November 28, 1999, pp. 20–21. For other interesting accounts of the choice of Gus Dur, see Mietzner, "The 1999 General Session," pp. 41–43; R. William Liddle, "Indonesia in 1999," *Asian Survey*, vol. 40, no. 1 (January/February 2000), pp. 32–42, at pp. 37–38.

[36] Angus McIntyre, *The Indonesian Presidency: The Shift from Personal Toward Constitutional Rule* (Lanham, MD: Rowman & Littlefield, 2005), pp. 192–93.

[37] Jacques Bertrand, *Nationalism and Ethnic Conflict in Indonesia* (Cambridge: Cambridge University Press, 2004), p. 105.

[38] Jun Honna, *Military Politics and Democratization in Indonesia* (New York: Routledge, 2003), p. 176.

[39] McIntyre, *The Indonesian Presidency*, p. 217.

[40] See her revealing statements quoted in McIntyre, *The Indonesian Presidency*, p. 214.

[41] The Condorcet winner (after the Marquis de Condorcet) is the victorious candidate in a series of head-to-head contests.

In all of this maneuvering, and despite Megawati's rigidity, there were continued manifestations of the disposition to compromise within the MPR that had been evident in the framing of the electoral and parties laws and in the reduction but not elimination of armed forces seats before the June election. No doubt, in part, this disposition was fed by fears about growing partisan crowds in the streets as the MPR's choices were about to be made. It was a time of polarization, with Muslim organizations fiercely opposed to Megawati and secular students stridently antagonistic to Habibie. Gus Dur was the one candidate over whom no one would fight.[42]

The elaborate deal to make Gus Dur president placed Amien Rais as speaker of the MPR and Akbar Tandjung of Golkar as speaker of the DPR. These three, joined by Megawati and Wiranto, the army commander who had allied with Habibie, then proceeded to craft a so-called National Unity Cabinet consisting of 37 members of all major political parties, regions, religions, and ethnic groups (including Chinese, Papuan, and Arab).[43]

Anyone who knew Abdurrahman Wahid might have been skeptical of his willingness to be hemmed in by constraints deriving from the circumstances of his election and from a cabinet that did not owe its loyalty to him.[44] A thoroughly tolerant man – "Gus Dur is so open and so tolerant that he tends to tolerate all kinds of injustice"[45] – with a keen sense of humor and the courage of his convictions, even if they required berating Muslim fanatics or advocating establishment of economic relations with Israel, Gus Dur had also been a consummate political maneuverer. He was as adept at working with Suharto in the late 1990s as he had been at opposing him a few years earlier. He was equally skillful at retaining control of the traditionalist Muslim organization Nahdlatul Ulama (NU), with its tens of millions of supporters in the countryside, as he was at fending off the incursions of modernist Islam.[46] He was at once devout and cosmopolitan. As president, he issued a number of decrees revoking bans

[42] As even a PDI-P leader later said in an interview. F.N. 2:84.

[43] See Kevin Evans, "Anatomy of the MPR and the 'National Unity' Cabinet," unpublished paper, Jakarta, November 7, 1999.

[44] For a subtle and sympathetic portrait, see R. William Liddle, "The Story Behind Abdurrahman," *Jakarta Post*, February 9 and 10, 2000.

[45] Quoted in Margot Cohen, "Man of Many Parts," *Far Eastern Economic Review*, vol. 162, no. 44 (November 4, 1999), pp. 20–22, at p. 21.

[46] For Nahdlatul Ulama and Abdurrahman Wahid, see Robin Bush, "Islam and Civil Society in Indonesia: The Case of the Nahdlatul Ulama," Ph.D. dissertation, University of Washington, 2002. For a very concise introduction to traditionalist and modernist Islam in Indonesia, see R. William Liddle, *Leadership and Culture in Indonesia* (Sydney: Allen & Unwin, 1996), pp. 72–77.

on an array of minority religions, from Confucianism to Baha'i and Jehovah's Witnesses.[47] He may have seemed ideally suited to lead a thoroughly plural society, such as Indonesia's. But there was one insuperable obstacle. An independent operator, he was an unlikely candidate to play the role in which he was cast by the MPR.

With 12 percent of the popular vote in June 1999 and a smaller share of seats, Gus Dur's PKB had no strong legislative base. Yet he acted as an elected president, rather than as leader of the coalition that had placed him in power.[48] Before long, he began to dismiss members of the cabinet foisted upon him and to create his own. Within a year and a half, he had replaced 19 ministers, who promptly became his opponents. Called to the DPR under its interpellation power, he declined on constitutional grounds to explain the dismissals. His original cabinet had been full of interministerial jurisdictional disputes. Naturally enough, many ministers did not think they were answerable to the president. Below the surface, there was a struggle for economic assets denied the opposition under the New Order, and Gus Dur tried to place key ministries under the control of those loyal to him. PDI-P, PAN, Golkar, and PPP – parties with more than three-fourths of the seats in the DPR – all began to be shut out of lucrative opportunities.[49]

As these struggles wore on, there was insufficient attention to Indonesia's persistent problems. Violence did not abate and indeed spread to the island of Lombok, a new site. There were few steps taken to prosecute malefactors of Suharto's regime, and Abdurrahman Wahid had great difficulty bringing the armed forces under civilian control.[50] His maneuvers in this respect were often inept and transparently manipulative.[51] The implementation of

[47] For the details, see Alfitri, "Religious Liberty in Indonesia and the Rights of 'Deviant' Sects," *Asian Journal of Comparative Law*, vol. 3, no. 1, article 3 (2008), pp. 1–27.

[48] Cf. Juan Linz, "The Perils of Presidentialism," *Journal of Democracy*, vol. 1, no. 1 (Winter 1990), pp. 51–69.

[49] For this period, see Kees Van Dijk, *A Country in Despair: Indonesia Between 1997 and 2000* (Leiden: KITLV Press, 2001), pp. 469–521; Marcus Mietzner, "Abdurrahman's Indonesia: Political Conflict and Institutional Crisis," in Grayson Lloyd and Shannon Smith, eds., *Indonesia Today* (Lanham, Maryland: Rowman & Littlefield, 2001), pp. 29–44; R. William Liddle, "Indonesia in 2000: A Shaky Start for Democracy," *Asian Survey*, vol. 41, no. 1 (January/February 2001), pp. 208–20.

[50] See Salim Said, "President Abdurrahman Wahid and the Indonesian Military: The Short Honeymoon," paper presented at a conference on "Consolidating Indonesian Democracy," Ohio State University, May 11–13, 2001. The same paper also appeared in Salim Said, *Militer Indonesia Dan Politik* (Jakarta: Pustaka Sinar Harapan, 2001), pp. 333–64.

[51] See Marcus Mietzner, "The Politics of Military Reform in Post-Suharto Indonesia: Elite Conflict, Nationalism, and Institutional Resistance," East-West Policy Studies, no. 28, Washington, DC, 2006, pp. 24–29; Stefan Eklöf, "Political Business and Democratization

regional autonomy also stagnated. In the face of these developments, Gus Dur traveled the world and, at home, pressed unpopular causes, such as rehabilitation of ex-communists. Scandal tainted his own office. Within less than a year of his inauguration, the president was exceedingly unpopular with the political elite, although he had considerable support in public opinion.[52]

Gus Dur failed to understand the cooperative foundations of government and misread the prerogatives of his office in this transitional period. Indonesia had no tradition of a strong presidency apart from dictatorship, and the MPR was in no mood to permit the president to become unchallenged master of his own house. A more nimble and statesmanlike leader might have cultivated support in the MPR for latitude in the presidential office, but Gus Dur was not a master of diplomacy.

Called to the MPR in an atmosphere of growing interparty tension,[53] to give an accountability speech in August 2000, Gus Dur apologized for his shortcomings and promised to learn from his mistakes.[54] The president then was obliged to sit (or, more than occasionally, sleep) through days of blistering criticism, focused on his need to compromise with those who had put the government in place. Most speakers thought there was still hope for the government, but a representative of a small party in Gus Dur's own NU stream suggested ominously that it might be necessary to throw the captain overboard to save the ship. The sources of applause were highly polarized. Either the Islamic parties of the Central Axis expressed approval, usually of the most critical statements, or the PDI-P and PKB did. The events that led to Gus Dur's removal exacerbated rivalries between traditionalist and modernist Muslims.[55] Golkar held the balance of power. Both PDI-P and Golkar would defect from Gus Dur's side later. At the end of the session, under great pressure, Gus Dur agreed to delegate a fair share of day-to-day cabinet work to Megawati, his vice president.[56] His coerced agreement was emblematic of his symbolic subordination.

in Indonesia," in Edmund Terence Gomez, ed., *Business and Politics in East Asia* (London: Routledge, 2002), pp. 216–49, at p. 241.

[52] See the results of a survey conducted in five Indonesian cities on four different islands (n = 1,240) reported in the *South China Morning Post*, July 13, 2000, p. 12.

[53] Party militants were being mobilized for combat in Jakarta if necessary. *Jakarta Post*, August 4, 2000, p. 3.

[54] I attended this MPR session, and my field notes reveal that these were the only applause lines in his speech, so sour was his reception.

[55] Tan, "Anti-Party Reaction in Indonesia," p. 486.

[56] See *Wall Street Journal*, August 16, 2000, p. A18.

The peace this move bought was short-lived. Within weeks, the president reshuffled his cabinet without consulting with Megawati. The new cabinet contained no ministers from Golkar or PDI-P. And so, to the simmering opposition of Amien Rais and his allies was added the opposition of the two largest legislative parties.[57] Again, the president had exercised what he thought was his constitutional authority. The MPR had a different view. At the end of its 2000 session, an influential Golkar legislator articulated it: "The position of Parliament and the president is now equal," he said.[58]

In fact, the branches were anything but equal. Following the requirements laid down in an MPR decree in 1978,[59] the DPR set in motion the multimonth procedure by which the president would be compelled to answer allegations of violations of national policy. An inadequate response, followed by another, was sufficient under the decree to allow the DPR to request the MPR to convene a special session to hear an accountability speech. If the speech were ultimately rejected, the president would be removed, and the vice president would serve the rest of his term. In the end, a desperate Abdurrahman Wahid tried to thwart the proceedings by issuing emergency decrees and dissolving parliament, but no police or military commander would comply. In response, the MPR foreshortened the two-month notice period for an MPR special session to hear an accountability speech. With Gus Dur absent, the proceedings began, and the president was removed in July 2001. In a sign of how confused the constitution remained, armed forces representatives in the MPR voted against their commander-in-chief. Megawati succeeded him. With Megawati's support, PPP leader Hamzah Haz was elected vice president. Gus Dur had not proved to be Gus Durable.[60]

"There was a sense of victory among the legislators, who have been at war with Mr. Wahid almost since they elected him to a five-year term . . . ."[61] The whole crisis pushed the constitution to its limits – and

[57] For Amien's predicament, see Asiaweek, May 5, 2000, pp. 24–25. For the Golkar and PDI-P aspects, see *Far Eastern Economic Review*, September 7, 2000, pp. 26–28.

[58] Slamet Effendi Yusuf, quoted in the *Wall Street Journal*, August 1, 2000, p. A12.

[59] MPR Decree no. III of 1978, art. 4. For a concise summary of the procedure and the text of the decree, see National Democratic Institute, "What Happens Next? A Note on the Constitutional and Legal Provisions on Conflict between the Legislature and the President," NDI, Jakarta, February 5, 2001.

[60] For a step-by-step account of the proceedings, see Andrew Ellis, "Events of July 2001 in Indonesia: A Brief Chronology and Commentary," NDI, Jakarta, August 4, 2001.

[61] Seth Mydans, "Jakarta Assembly Meets to Remove Chief from Office," *New York Times*, July 23, 2001, p. A1.

beyond. One of the precipitating events was the president's desire to dismiss his police chief without the required concurrence of the DPR.[62] On the other side, the MPR was willing to remove the president in the middle of his fixed five-year term for policy failures, rather than for what would be regarded in most presidential systems as impeachable offenses. It did so on the basis of the 1978 MPR decree on the subject that probably went beyond what the constitution contemplated; and, even then, it failed to observe the prescribed notice period. Both sides appealed to the armed forces for support, strengthening the position of a military at best ambivalent about the reform project. This protracted crisis was caused by Gus Dur's failings and the failings of a constitutional structure that, in a fragmented legislature, could not produce an effective executive. One might have thought it did not bode well for constitutionalism in Indonesia.[63]

The result of the crisis was not merely to slow down constitutional change but to shore up the confidence of the MPR in its own supremacy and to reinforce the strong aversion of its incumbents to independent executive power following the demise of the New Order regime. The structure that seemed certain to follow was bizarre: a three-house legislature consisting of the DPR, a house of the regions, and the MPR with continued armed forces participation for the time being, and an indirectly elected president with a fixed but insecure term. The president had executive responsibility but little power to match the duties of the office. He or she was subject to the DPR's now-constitutionalized power of interpellation and the MPR's permanent working body assigned to review presidential implementation of MPR decrees. The MPR could declare a president ineligible to run for reelection, though he was otherwise eligible, and could dismiss the president in the middle of his term, but the president could not

[62] The president had the power to appoint and dismiss the police chief by himself under Law no. 28 of 1997 on the State Police of the Republic of Indonesia, art. 11(1), but MPR Decree VII/2000, art. 7(3), made it clear that the police chief could only be appointed and dismissed by the president with the approval of the legislature. Understanding this change, Gus Dur had appointed the chief in an acting capacity one month later and without legislative approval. But when the president suspended him less than a year later, the chief argued that his removal was invalid without legislative approval. Close observers will note the dubious nature of an MPR decree in contradiction of a statute, but the president himself acted as if the MPR had the authority to do what it did, and he tried to circumvent the decree by opting for only an acting appointment. For assistance on this issue, I am indebted to a fine memorandum by Jennifer Behrens, April 30, 2012.

[63] So tarnished was the reputation of civilian politicians by the whole affair that public opinion of the military was enhanced. See Marcus Mietzner, *Military Politics, Islam, and the State in Indonesia: From Turbulent Transition to Democratic Consolidation* (Singapore: Institute of Southeast Asian Studies, 2009), p. 242.

force the legislature to go to the electorate in the middle of its term. As this was not a presidential system, neither was it parliamentary.

As the crisis unfolded, some Muslim clerics blamed it on a flag at the presidential palace, which was full of Suharto's "black spirits" and therefore needed replacing.[64] The roots of the crisis were not so ephemeral. Gus Dur was unusually obdurate, but no president could have functioned well when he had no direct mandate from the electorate but had been chosen by a fragmented legislature over which he had no constitutional power and to which his ministers owed their appointment. The black spirits of 1999–2001 were not just Suharto's, which produced in reaction a preference for an emasculated executive. They also went back to the 1955–59 period, which discredited the parliamentary alternative, and went forward to Habibie, whose success in keeping the reform process internal revitalized the MPR and so exposed the weakness of the 1945 constitution as an instrument for democratic politics.

Megawati learned the lessons of the moment well. Her choice of Hamzah Haz was an act of obeisance to the Central Axis that had been out front in the drive to dismiss her predecessor. Her "Gotong Royong Cabinet" – a reference to a supposedly traditional Javanese cooperative working group and a term habitually used by her father and so laden with Sukarnoist symbolism[65] – comprised members of all parties with significant support in parliament, save Gus Dur's PKB. This meant again that no pattern of government and opposition would be likely to emerge in the legislature. A cohesive legislature could confront and subordinate a recalcitrant president. Days after Gus Dur's departure, the Golkar leader Akbar Tandjung had threatened Megawati with the same fate if she failed to act in accordance with the prevailing power relations.

Unlike Abdurrahman, Megawati was compliant. Constitutionally conservative, she was at home with the existing arrangements and even took over some personnel from the Suharto period. To the delight of some legislators, she did little about corruption. To the pleasure of the army, she renewed military action against separatists in Aceh and Papua. Economic reform proceeded slowly. By temperament, Megawati was not

[64] Ali Mascan Moesa, quoted in the *South China Morning Post*, July 13, 2000, p. 12. Six years on, political opponents of a later president would blame Indonesia's natural disasters on the president's "hot hands," which were said to be angering nature. Ibid., July 25, 2006, p. A12.

[65] On *gotong royong* as an invented tradition, see John R. Bowen, "On the Political Construction of Tradition: *Gotong Royong* in Indonesia," *Journal of Asian Studies*, vol. 45, no. 3 (May 1986), pp. 545–61.

likely to take initiatives that would challenge the legislature, and it, in turn, was not likely to push a confrontation that could lead to the succession of Hamzah Haz, a relatively radical Muslim but politically weak and not generally thought to be of presidential caliber. To outward appearances, it looked as if matters could stabilize around the new equilibrium, with the MPR as the embodiment of sovereign power.

A FORMULA TO ELECT THE PRESIDENT: FRANCE MEETS NIGERIA IN JAKARTA

The appearances could not have been more misleading. The inertness of Megawati allowed the MPR to turn its attention back to constitutional reform. Among the matters that occupied the MPR was direct election of the president. Election of the president without any MPR involvement was an improbable outcome. Before the impeachment crisis, there were cross-currents of opinion among the political elite on this issue. The two main PAH I alternatives were on the table. Both, it will be recalled, involved the MPR in presidential selection. But neither coincided with the full range of elite opinion.

On one side, a strand of deep conservatism was visible, most prominently in the PDI-P but also among armed forces and functional group representatives.[66] Without a two-party system, it was thought by a PDI-P leader concerned with the overall constitutional design, illegitimate minority presidents would be elected; and intense partisanship could produce violence in presidential elections, as Megawati's loss to Gus Dur in the MPR had begun to do in 1999.[67] On such a view, thought an otherwise progressive PDI-P leader, perhaps it would be preferable to begin with elections for local government executives and work gradually upward.[68] There was confidence among the PDI-P that its popularity would be sufficient for its candidate to make it to a runoff after the first round of a direct election, but a sense that a PDI-P candidate, particularly a poor campaigner such as Megawati, would be in a better position to win a second round in the MPR than in a popular vote.[69] Projecting from the

[66] F.N. 2:131; F.N. 2:182.

[67] F.N. 2:84. For some PDI-P views, see *Kompas* (Jakarta), July 31, 2000, p. 1. Even some in the PKB, otherwise committed to direct election, feared popular violence over election results. F.N. 2:92.

[68] F.N. 2:86.

[69] See Harold Crouch, *Political Reform in Indonesia after Soeharto* (Singapore: Institute of Southeast Asian Studies, 2010), p. 58.

1999 vote, Megawati would have a strong position in a post-2004 MPR, even stronger if there were first-past-the-post legislative elections in 2004. And finally, there was fear in the PDI-P and in some other parties that direct election could produce enduring polarization if ethnic or religious divisions found their way into presidential contests.[70] So there were many reasons for the caution in the PDI-P about direct popular election of the president.

Reservations about direct election were by no means confined to the PDI-P. PPP leaders also held considerable concern about direct election,[71] but the party became more open to the idea as time passed.[72] PAN, whose leader Amien Rais chaired the MPR and entertained presidential ambitions, was solid in wanting the MPR to play a role in choosing the president.[73] The same was true for his PK allies in the Reformasi faction. Both parties wanted the MPR to choose two presidential–vice presidential tickets to compete in a popular election.[74] For Amien, such a position made sense. As leader of a relatively small party, he would be unlikely to make it to the second round in a direct election, but perhaps the MPR might choose his ticket to compete with another for the favor of the voters. Leaders of some other small parties preferred MPR selection of the president, because they had presidential ambitions that could not be realized through direct popular election at all.[75]

By August 2000, a PAH I leader reported that, of the eight factions that had tentatively agreed on direct election, seven had defected.[76] Only PKB, its leader, Gus Dur, by then more popular with the public than with the MPR, was steadfastly in favor of a popular vote.[77] A most well-informed member of PAH I by then believed there would be no consensus, and so the 1945 provisions for presidential selection by the MPR would survive.[78] This forecast would prove to be very far from the mark.

MPR members saw all the main proposed electoral formulas as problematic. For example, an idea for the alternative vote came from the Team of Seven, now free-lancing on these issues, but the AV proposal foundered

[70] F.N. 2:95 (a leading member of PAH I).
[71] F.N. 2:98–101 (a PPP member of PAH I).
[72] F.N. 2:159–64 (same).
[73] F.N. 2:141–42 (a PAN leader).
[74] F.N. 2:181, 182 (a PAH I leader with a good overview of the positions of various parties).
[75] F.N. 2:171 (a leading member of PAH I).
[76] F.N. 2:150 (a PKB leader).
[77] Ibid.
[78] F.N. 2:168.

on doubts about the likely accuracy of a slow count away from the polls.[79] The use of an American-style electoral college, which could be weighted toward the Outer Islands, was a favorite idea of a Tim Tujuh member, himself from an island in eastern Indonesia. As we have seen, it was proposed but eventually dropped,[80] despite its appeal to the PPP and Golkar, with their Outer Island bases.[81] CETRO, the civil society organization, had been lobbying for a system modeled on the Nigerian requirements of plurality plus territorial distribution to win the election. Some Javanese politicians thought a system requiring territorial distribution would favor the Outer Islands and prevent the emergence of a Javanese president.[82] Yet, absent some such check, others feared the weight of Javanese numbers, while still others expressed concern that the Nigerian plurality-plus-distribution features might not be sufficient to elect a president with a broad base of support.[83] The prospect of victory by a small plurality concerned them. Underlying this apprehension was the brute fact that there were multiple *fraksi* in the DPR, each of which might throw up a presidential ticket. Conservatism was thus underpinned by party interest and views about the Indonesian electorate, reinforced by Indonesia's history of violence, combined with the proliferation of parties and uncertainty about the way various electoral systems would function given these circumstances.

There seemed to be no clear response to these doubts. The more proposals were put forward, the less disposed many members were to choose among them.

On the other side were those who, acknowledging such problems, thought there were answers, either in the Nigerian system or in a French-style runoff of the top two tickets. The two PAH I proposals that had most

[79] F.N. 2:113; F.N. 2:151; F.N. 2:185–86. It was well remembered that it had taken a month to certify the 1999 legislative results.

AV is a preferential electoral system requiring 50 percent plus one of the votes cast in order to win election. If no candidate secures such a majority of first preferences, the candidate with the fewest first preferences is dropped, and that candidate's second and subsequent preferences are apportioned to the remaining candidates. The process is repeated until a majority winner emerges. In a multiparty system such as Indonesia's, the advantage is that no candidate can win on a small plurality. The winner would have majority support at some level of preference, but the count could be complicated and time consuming.

[80] F.N. 2:155–56; F.N. 2:172; F.N. 2:186.

[81] F.N. 2:131; F.N 2:159–60 (a Golkar leader and a PPP leader, respectively).

[82] F.N. 2:93 (a PKB legislator).

[83] Here and in the next paragraph, I am drawing on the meeting convened by CETRO referred to in note 23, above.

support in the committees had both involved the MPR and a popular vote, as I have noted. These stood between the apprehensions of those who concluded that direct popular election was a bad idea altogether and those who believed that, with the right system in place, it could be made to work. Across this broad spectrum, there was no uniform pattern of party preferences before the Gus Dur crisis, despite what was crystallizing in PAH I. Even as Megawati was influencing her followers to abjure direct election, some prominent PDI-P leaders still favored it.[84] And some parties worked to accommodate others, thereby blurring their own preferences. Eager to distance itself from its authoritarian past,[85] Golkar wanted direct popular election of the president, but some of its leaders also feared that direct election could split the polity into Muslim and secular tendencies,[86] a serious problem for a party that aimed to span that cleavage. Eventually, Golkar began to coordinate with PAN (or, more properly, the Fraksi Reformasi, consisting of PAN and PK) on a mixed MPR–popular vote proposal when it looked as if popular election alone could not pass.[87]

At the annual MPR session of 2000, there was a sense of deadlock on these issues. Deadlock was congenial to those contemplating a strong role for the MPR and a weak president.[88] Still, there was also a belief among many members that somehow the public had to be involved in choosing the president, probably in conjunction with the MPR, if only the right method could be found.[89] Nearly every party caucus was conflicted internally over the direct election question, and positions were in flux.

If direct popular election was in doubt before the impeachment crisis, how could it possibly have survived the crisis and the revival of MPR power brought about by that crisis? This perplexing puzzle has a composite answer. The mode of electing the president was already on the agenda. The MPR was criticized in the press and in Jakarta NGO circles for its allegedly self-serving, power-grabbing propensities, even as its action in removing Gus Dur met with considerable approval. In surveys, supporters of the various parties were unwilling to acknowledge at the 50-percent level or above that their party put the public's interests first; in the cases of

[84] Crouch, *Political Reform in Indonesia After Soeharto*, p. 60; F.N. 2:48–50; F.N. 2:185.
[85] Golkar was in a difficult situation: it had been part of the New Order and wanted to show people it had already changed. That was why it favored direct election, reported one of its most prominent leaders of the time. F.N. 3:107.
[86] F.N. 2:76–78 (Golkar PAH I members).
[87] F.N. 2:181–83 (a confidant of Habibie who followed the proceedings closely).
[88] See Ellis and King, "Indonesia's Bumpy Road to Constitutional Reform."
[89] F.N. 2:162; F.N. 2:168–69 (two influential members of PAH I).

PAN, PPP, and Golkar, the percentages were as low as 22, 17, and 11.[90] With skepticism running this high, MPR leaders could scarcely take the issue of direct election off the table; it had to be confronted squarely. This was all the more true as many outside the MPR, and some inside, saw the dark side of the MPR's impeachment victory: an imbalance of power that gave a foretaste of immobilism. In Indonesia, perceived immobilism had been the excuse for dictatorship. And then a key ingredient had changed, as Megawati reassessed her interest and therefore the position of her party. This reassessment altered the prospects for passage of a direct-election proposal. Golkar then returned to a formula that, by assuaging most fears, proved irresistible.

As I have explained, it had been thought likely in July 2000 that the MPR would be involved somehow in choosing the president. Fortuitously, however, the array of proposals – there were at least seven possibilities – gave the MPR little confidence in making a choice. There had been no two-thirds majority for any of the PAH I proposals, with their role for the MPR in the presidential selection process. This stalemate and the Gus Dur crisis had forestalled further consideration of the issue. Rather than reinforcing the ossification of constitutional forms that would have facilitated MPR supremacy, the crisis opened the way to the PDI-P shift and the Golkar solution. Ultimately, the MPR took itself out of the presidential selection process. This was a remarkable turnaround.

The first-round issue proved easier to resolve. Never comfortable with direct election of the president, many PDI-P leaders were at first hard to convince. Megawati had thought that the 1945 constitution, which had empowered her father, created a strong presidency. But the removal of Gus Dur occasioned a rethinking. The MPR power to elect a president, and its highly discretionary power to remove an incumbent, created a presidency at the pleasure of the supralegislature. This was not in Megawati's interest. And so, in the few months between the 2001 special MPR session that removed Abdurrahman Wahid and the 2001 annual session at which the Third Amendment to the constitution was considered, the PDI-P changed its position. It now accepted direct election and removal only on very limited, nonpolitical grounds.[91] When even Megawati agreed to popular election in the first round, the center of gravity in the debate had shifted. At

[90] Tan, "Anti-Party Reaction in Indonesia," p. 503.

[91] I owe much in the paragraph up to this point to Blair King, who communicated some of the ideas contained in it. See also his dissertation, "Empowering the Presidency: Interests and Perceptions in Indonesia's Constitutional Reforms, 1999–2000," Ohio State University, 2004, p. 116.

this point, she did not, however, favor a popular runoff if no candidate prevailed in the first round, and that quite probably made her assent to direct election in the first round an easier choice.

Megawati's position was perhaps a bit curious. It meant that even a sitting president who was standing for reelection and had made it to the second round would be dependent on the approval of the MPR to renew his or her mandate. And that power would feed back to render the president beholden to the MPR during the whole of the first term. The same could be true of Amien's preference for MPR nomination. If renomination were also dependent on MPR approval, a first-term president would have little independence of the MPR.

Megawati's party was not alone in drawing important general lessons from Gus Dur's failure. Important actors in the armed forces, including the future president, Susilo Bambang Yudhoyono, concluded that "only a strong mandate could break the deadlock within the political elite."[92] Thereafter, the armed forces slowly abandoned their opposition to direct election of the president. But, as we shall see, there was some considerable backing and filling among senior officers and their allies.

Golkar, as we have observed, had been flexible in its preferences for presidential selection methods, but it had aimed at direct election. Many of its leaders had been attracted by CETRO's proposal that a version of the Nigerian distribution system be used. CETRO had advocated provisions identical to Nigeria's: plurality plus at least 25 percent in no fewer than two-thirds of the provinces.[93] A distribution requirement was naturally congenial to a party like Golkar, with disproportionate support on the Outer Islands. But Golkar was wary of a system that allowed a plurality victory. The plurality winner in the 1999 DPR election was PDI-P. And so it was proposed and agreed that there would be a majority criterion, together with distribution – in this case, 20 percent in half the provinces – for victory. Both criteria would work against a presidential ticket with appeal in Java but not elsewhere. The same Outer Island sentiment that gave rise to devolution and creation of a regional house drove Golkar's embrace of the majority-plus-distribution electoral formula.

Earlier, some parties, notably the PPP,[94] had been reluctant to embrace the Nigerian system on grounds of its unfamiliarity when Golkar brought

[92] Mietzner, "The Politics of Military Reform in Post-Suharto Indonesia," p. 48.

[93] See "CETRO Proposal," typescript, Jakarta, May 2000. Compare Constitution of the Federal Republic of Nigeria, 1999, arts. 133, 134.

[94] F.N. 2:162–63 (an influential PPP member of PAH I).

it forward. Behind this reluctance lay great conservatism about foreign importation. But now, when it was possible to constitutionalize direct election, those doubts evaporated. And, by embracing distribution, Golkar was able to avoid having to sell explicit anti-Javanese weightage, whether by electoral college or otherwise, to the PDI-P or PKB, both Java-heavy parties. Distribution would do the same job informally.

The Golkar proposal had one problem. In the event that no presidential ticket reached the 50-percent mark, there needed to be a fallback. Golkar wanted a runoff, but some in the MPR thought a runoff too expensive or too conducive to instability.[95] The Nigerians had originally (in 1978) opted for a quite different fallback by providing that if no candidate met both the plurality and distribution requirements, the federal and state legislatures, sitting separately but simultaneously, would elect one of the candidates by simple majority vote.[96] In Indonesia, participation of provincial legislatures in the process would have been anathema to PDI-P and other centralists. In any case, a year later the Nigerians had amended their constitution to provide for a popular runoff solution to the problem. This was reaffirmed in the 1999 Nigerian constitution from which CETRO had drawn its inspiration.[97]

Doubts about a runoff fueled the lingering attractiveness of involving the MPR in a second round. At this stage, those who preferred MPR involvement to a popular runoff in the second-round decision included, in addition to PDI-P and armed forces legislators, some in PBB and Reformasi (i.e., PAN and PK). If PDI-P remained the plurality party, its presidential ticket would surely be one of the top two contenders if no ticket won a majority of the popular vote in the first round, but it remained wary that its ticket might not be the majority choice in a direct runoff election. PDI-P still preferred that the second round be decided by the MPR. The party thus made a deal with Golkar, as Andrew Ellis has explained.[98] PDI-P, a centralist party reluctant to empower the new regional house of the legislature, nevertheless agreed to accept some legislative power for the DPD, in exchange for which Golkar conceded that the MPR would decide the second round of the presidential election, if a second round were necessary. But, for a variety of reasons, some PDI-P

[95] F.N. 2:159 (same).

[96] Constitution of the Federal Republic of Nigeria, 1979, art. 126. See B. O. Nwabueze, *The Presidential Constitution of Nigeria* (London: C. Hurst & Co., 1982), p. 192.

[97] Constitution of the Federal Republic of Nigeria, 1999, art. 134. See Nwabueze, *The Presidential Constitution of Nigeria*, p. 193.

[98] Andrew Ellis, "The Fundamental Changes that Nobody Noticed: The MPR Annual Session, November 2001," NDI, Jakarta, January 2002, pp. 6–7.

legislators could not be carried along and declined to vote the DPD those powers. Because of this and because of the opposition of the PPP, PKB, and others to involving the MPR in the presidential electoral process, the deal fell apart. It then proved impossible to agree on any mechanism for the second round, and that issue was put over until 2002.

Still, the original Golkar formula had staying power. The distribution feature, it was believed, would prevent a narrow ethnic or sectarian segment from capturing the presidency alone and in the process polarizing the state. The majority requirement would solve the problem of party fragmentation and prevent the possible election of a president on a plurality far short of 50 percent. The most likely such plurality was a narrow Java-based secular-nationalist one, of the sort PDI-P could produce. In the sense that it allayed several different apprehensions, the proposal was profoundly appealing. It remained only to decide in what forum the president's majority would be ascertained if no candidate won a majority in the first round.

In the meantime, despite the absence of agreement on a second-round fallback provision, the Third Amendment was enacted.[99] It provided that the president and vice president would be elected directly on the basis of a single ticket. The criterion for victory was a majority of the overall popular vote plus at least 20 percent of the vote in no fewer than half the provinces. Given direct election, it followed that the president or vice president could be dismissed by the MPR only for serious violation of law, or disgraceful behavior, or failure to meet the formal requirements of the office (for example, by no longer being of sound mind). A new process for impeachment was established, involving first a referral to the Constitutional Court that was also established by the amendment. The referral required a two-thirds vote of the DPR, then a trial by the court to determine the adequacy of the grounds, followed by a DPR determination to forward the matter to the MPR and finally a decision by a supermajority of the MPR. It could not have been made clearer that the presidency was truly for a fixed term and that the MPR was putting itself out of the no-confidence business.

In fact, the Third Amendment began to put the MPR out of business for most purposes.[100] It provided for sovereignty in the people rather than in

[99] For the text, see Third Amendment to the 1945 constitution, November 9, 2001, arts. 6A(3), 7B.

[100] If the president and vice president were to be elected directly, it began to be asked, why have an MPR at all? See J. Soedjati Djiwandono, "Judicial Review May Be Problematic," *Jakarta Post*, November 26, 2001; editorial, *Jakarta Post*, December 31, 2001. For the relevant provisions of the Third Amendment, see 1945 constitution, as amended, arts. 1(2), 2, 22C, 22D.

the MPR and limited the MPR's functions to amending the constitution, inaugurating the president and vice president, and, if need be, dismissing them after the cumbersome process laid out in the amendment. The amendment also established the regional house, the Dewan Perwakilan Daerah or DPD, with a membership one-third the size of the DPR, to be elected directly. The DPD was, however, given only limited legislative and oversight powers.

In all, it was a breathtaking performance that put Indonesia on the path to a completely different sort of constitutional regime, one recognizably based on equality among the branches. The MPR abandoned not only its power to elect and dismiss the president at will but also its power to enact the Broad Outlines of State Policy for the president to follow and the power to interpret the constitution, which it gave to the new Constitutional Court. To be sure, the elected members of the MPR could be consoled by the fact that they were also members of the DPR, and this undoubtedly colored their willingness to be bold. But even the unelected members acquiesced in these changes.

The magnitude of the changes flowed from the basic decision to elect the president and vice president directly. Once their mandate derived from popular vote, MPR sovereignty was an anomaly, and tightly restricted impeachment was a necessary corollary. All that remained was to decide on the MPR's power to select a president if the first-round popular election proved inconclusive. Although a jaded Jakarta elite was slow to recognize it, direct election of the president was a tipping point.[101]

The failure of the Golkar–PDI-P deal, like the earlier failure of the Golkar-Reformasi bargain, proved helpful to advocates of completely popular election. Both of those compromises had involved the MPR in presidential selection. Now, however, the first round was settled, and the focus was on the problems that MPR involvement in the second round might entail. The Third Amendment provided that presidential tickets

[101] It had been foreseen by a PDI-P leader active in the PAH I process that, once the president was to be elected directly, there was no stopping as far as the MPR's powers were concerned. A cynical press did not usually see it that way. The weekly news magazine *Tempo* had wondered "what the job of the MPR will be if the president and vice president are directly elected." *Tempo*, No. 08/II/October 30–November 5, 2001. The *Jakarta Post* said the same thing, but could not imagine that the MPR would see its own raison d'être undermined by direct election of the president: "Such is the power of the MPR, thanks to the series of constitutional amendments, which makes it hard to envisage the political factions ever wanting to give it up." *Jakarta Post*, December 31, 2002. This was seven weeks after the Third Amendment, embodying what Andrew Ellis aptly called "The Fundamental Changes That Nobody Noticed."

were to be proposed by parties or combinations of parties.[102] Conceivably, this might have allowed the MPR power to narrow the field to two tickets in advance of the election, but that narrowing would have to be done by an outgoing lame-duck MPR or be preceded by a legislative election to take place before the presidential election. A more likely role for the MPR would be deciding on the winning ticket when no ticket met the majority and distribution requirements in the first popular round. But could the MPR legitimately choose a ticket that had attracted fewer votes, even if it met the distribution requirement? Or could it choose a ticket with a small plurality in a fragmented field? Would such a choice not be reminiscent of the selection of Gus Dur in 1999? Would it not be more straightforward to have the people choose a majority winner in a runoff?[103]

Against the background of these issues, the choice was no longer so hard. Once the MPR acceded to popular election and understood that its prerogatives were shaken, it readily agreed to creation of a second house and impeachment on limited grounds. Having done that, it was much easier to accede to a second-round popular presidential election on the French model, for, as a distinctive corporate body – apart from some very limited functions – the MPR had no future. Constitutional change was a game of inches, but the inches added up to miles.

In deciding on a popular runoff, the MPR's desire to avoid a minority president after the Gus Dur experience fit perfectly with Golkar's aspiration to be a catchall party. In the 1999 election, Golkar had been outpolled by PDI-P, but Golkar's support was broader in its propensity to span both territory and ideological streams, and in 2004 PDI-P's share of the vote declined. Insofar as it had an Outer Island feature and an antiplurality feature, the composite Nigerian-French presidential electoral system finally enacted in 2002 suited Golkar's interests, although, according to Ellis, before the 2002 MPR session Golkar would have been content to declare the plurality winner the victor if no candidate had a majority in the first round.[104]

[102] Third Amendment to the 1945 constitution, November 9, 2001, amending arts. 6A(1), 6A(2).

[103] This was the burden of a paper presented by NDI's Andrew Ellis to an MPR consultation session as the decision approached. "Second Round Presidential Elections: Options and Questions, A Note for PAH I Uji Sahih," NDI, Jakarta, May 16, 2002.

[104] See Andrew Ellis, "One More Heave? The Debate on the Fourth Amendment to the Indonesian Constitution," NDI, Jakarta, May 2002, p. 5.

PDI-P leaders had their reservations about the formula, to be sure, but the party was far from uniform in its opinions.[105] The Sukarnoist-PNI "old guard" was challenged by a faction that included legislative leaders Arifin Panigoro and Heri Achmadi.[106] Together with a senior PDI-P leader, Laksamana Sukardi, who was close to Megawati, they argued that full direct election would strengthen the presidential system and make Megawati more secure against enemies in the legislature.[107] She may not have been wholly convinced[108] – only a short time before she had suggested that the country would not be ready for direct election until 2009[109] – and she was worried about keeping the party together.[110] But in the end she yielded.

Others in the party did not give way so easily. Some nationalists were not completely at home with the new liberalism and, fearful of a return to the freewheeling democracy of the 1950s, may even have been affected by a touch of xenophobia, for they suspected that CETRO, allegedly funded by the West, was pushing an agenda from outside Indonesia.[111] Unelected functional-group and armed forces representatives were also hurt by the normalization of the MPR. Before the 2002 MPR session, PDI-P and functional-group representatives challenged the emerging consensus. Sukarnoists in PDI-P wanted to repeal the Third Amendment outright.[112] The armed forces commander then implied that the military would prefer that the 1945 constitution be reinstated in full.[113] Beyond the loss of unelected representatives, there were many features of the new arrangements distasteful to these groups: the prospect that Islamic parties and Golkar together could deny Megawati the presidency in a runoff; the creation of the DPD as the prelude to federalism or even regional secession;

[105] As indicated earlier, even in 2000 I had encountered PDI-P people in PAH I who favored direct election of the president. F.N. 2:48–50.

[106] See Crouch, *Political Reform in Indonesia After Soeharto*, p. 60.

[107] Here I am drawing on an extended interview, years later, with an important member of that faction. F.N. 3:94–101.

[108] Megawati expressed her ambivalence by saying that as "General Chairwoman of the PDI-P, I would instruct the party to reject the amendments," but as party president, "I must protect all the political forces." Quoted in Crouch, *Political Reform in Indonesian after Soeharto*, p. 60.

[109] *New Straits Times* (Kuala Lumpur), July 4, 2002, p. 24.

[110] In the view of a leading PDI-P member of PAH I, Megawati's uncertainty about direct election was attributable more to her concern with the unity of the party than with protecting the Sukarnoist legacy. F.N. 3:64.

[111] F.N. 3:96.

[112] King, "Empowering the Presidency," p. 125.

[113] *South China Morning Post*, August 4, 2002, p. 7.

an impending move by Islamists to include a clause in the constitution obliging Muslims to adhere to the tenets of the faith.[114] Centralists and secularists, the PDI-P and the army command were concerned that the new democratic dispensation did not guarantee the outcomes they preferred.

Yet they were increasingly alone. Months after passage of the Third Amendment, the support of other parties for the MPR to decide the second round had evaporated. The time for a deal had passed.

Megawati had been by turns resistant, inert, and acquiescent. Her decision to relent on the second-round issue was a turning point. PDI-P leaders, after all, had played major roles in the constitutional process since 1999. Some of them were committed to the process and equally open to deciding the second round by an MPR vote or a popular runoff.[115] Yet it was a tough decision in a badly divided party.[116] Against an overwhelming consensus, the objections of only some in PDI-P and of unelected members whom the vast majority of the MPR was prepared to push out of the body were insufficient to thwart passage of the Fourth Amendment.

No vote needed to be taken. By then there was strong sentiment against further deadlock. The amendment provided that if no presidential ticket meets both requirements on the first round, the two tickets with the largest number of votes (irrespective of provincial distribution) go to a runoff election, in which there is no distribution requirement.[117]

Megawati's conversion was complete. Just a week after adoption of the Fourth Amendment, she waxed eloquent about the benefits of direct election.[118] This was merely a few weeks after she had opposed it. Now Megawati spoke about how direct elections would enhance the legitimacy of the next president and turn the system decisively from a de facto parliamentary system to one in which an elected president would have secure tenure, unlike Gus Dur's, which she mentioned. In a long-overdue

[114] According to a PDI-P source, more than half the party's MPR members believed "we'd be back in what happened in the 1950s." F.N. 3:95.

[115] *Far Eastern Economic Review*, July 18, 2002, pp. 21–22, at p. 22, quoting Jacob Tobing to that effect.

[116] Compare two reports in *Tempo Interaktif* (www.tempointeractive.com), one from July 4, 2002, indicating PDI-P's acceptance of a popular second round, the other from the very next day reporting that the party was not yet committed to it.

[117] Fourth Amendment to the 1945 constitution, August 10, 2002, amending art. 6A(4) (Aug. 10, 2002).

[118] *Jakarta Post*, August 18, 2002. In her remarks, Megawati referred to the need to create a true presidential system, rather than the parliamentary system she said Indonesia had in practice. This was perhaps an allusion to the removal of Abdurrahman Wahid.

recognition of self-interest, she rather clearly envisioned herself as the incumbent.

Perhaps Megawati's newfound enthusiasm can be explained by a series of interviews by R. William Liddle with leaders of Golkar, PKB, and PPP, which revealed that they all assumed the winner of the first direct presidential election in 2004 would be none other than Megawati.[119] The interviews were conducted just before passage of the provision for a popular runoff. The forecast of Megawati's success proved to be wrong, but it may have been important in moving the PDI-P and its leader off their previous position.

Hybrid electoral systems can set up some curious incentives. The Indonesian system was assuredly a hybrid. The relation of its Nigerian distribution feature to its French majoritarian feature, however, became clearer in the 2004 presidential contest, as we shall see.

The Fourth Amendment also abolished a presidential advisory body, eliminated the 200 appointed representatives from the MPR, and provided for a phaseout of the remaining armed forces seats.[120] The MPR would no longer be a standing body; it would retain only the limited powers described previously and a power to fill executive vacancies in special circumstances.[121] For 2003, the MPR decided it would hear but not comment on or debate the president's accountability report. The constitutional entailments of the impending system of direct election were understood immediately.

The move to oblige Muslims to practice their faith, a proposal going back to 1945 but supported by only two Muslim parties holding a mere 12 percent of the seats, opposed by the two largest Muslim organizations and by religious minorities, and destined to fail overwhelmingly, was abandoned quietly in exchange for a clause committing the government to a "system of education that increases religious faith, devoutness, and character ...."[122] In other respects, the constitution, for all its dramatic changes, retained what seemed to be its generally secular character, with

[119] *Jakarta Post*, September 16, 2002.

[120] Fourth Amendment to the 1945 constitution, August 10, 2002, art. 2(1).

[121] If both the president and vice president were to die or resign, the MPR would choose a new president and vice president from the top two tickets in the last election. Ibid., amending art. 8.

[122] Ibid., amending art. 31. For a good account of this resolution, see Denny Indrayana, "Indonesian Constitutional Reform 1999–2002," Ph.D. dissertation, University of Melbourne Faculty of Law, 2005, p. 219. For the history of the proposal, the so-called Jakarta Charter, in 1945, see ibid., pp. 9–11. See also Nadirsyah Hosen, *Shari'a and Constitutional Reform in Indonesia* (Singapore: Institute of Southeast Asian Studies,

the notable exceptions of the declaration in article 29(1) that the state "shall be based upon the belief in the One and Only God" and the official recognition, going back to a presidential decree in 1965, of only six religions.

That the proposal to oblige Muslims to practice their faith was rejected so easily was an extraordinary development, given the long and painful history of the Islamic religious observance clause proposed in 2002.[123] The issue went right back to the founding of the republic, when some Muslims took the position that Islam should be the foundation of the state. Both Sukarno and Mohammad Hatta, his principal deputy and eventual vice president, opposed any such idea. In June 1945, Sukarno instead articulated his idea of *Pancasila* or five principles, including "belief in God," but not necessarily in Islam, as the *dasar negara*, the ideological foundation of the state. When Muslims in the nationalist movement protested, Sukarno appointed a committee to write a constitutional preamble. As a compromise, the committee appended the phrase that was to become so controversial: "with the obligation for Muslims to adhere to Shariah." This small amendment, known as the *Piagam Jakarta* or Jakarta Charter, was initially accepted by Sukarno, but debates over the role of Islam in the new state continued. It was also accepted that the president of Indonesia would have to be a Muslim.

No sooner was this language accepted than Hatta, hearing indirectly of objections from Christians in eastern Indonesia, who threatened to stay outside the new republic, cut both controversial provisions out. The 1945 constitution was quickly finalized without the crucial words. The 1945 constitution, however, was only provisional, and Muslims assumed there would be further opportunities for constitutional change.

The durability of the 1945 constitution, however, gave some Muslims an enduring grievance because of its thoroughly secular character. The issue came up again in the early 1950s, by which time Sukarno was firmly opposed to anything resembling an Islamic state. The PNI and the Communist Party both supported him, creating bitter antagonism with Muslims, especially in Masjumi. When the Konstituante sat, there were fierce debates on the *dasar negara*, and the Jakarta Charter proposal

2007), pp. 3–4, 93–96, 188–223. Hosen rightly points out that the actual meaning of this proposal would have had in practice is quite vague. Ibid., p. 213.

[123] See Adnan Buyung Nasution, *The Aspiration for Constitutional Government in Indonesia: A Socio-legal Study of the Indonesian Konstituante, 1956–1959* (The Hague: CIP-Gegevens Koninklijke Bibliothek, 1992); R. E. Elson, "Another Look at the Jakarta Charter Controversy of 1945," *Indonesia*, vol. 88 (October 2009), pp. 105–30.

was revived, but it was not accepted by the plenary assembly of the Konstituante. When Sukarno restored the 1945 constitution, proponents of the Charter felt they had been cheated yet again.

The debate was revived in the early New Order period, but there was no change in the *Pancasila* foundations of the state under Suharto. With his fall, the worldwide Islamic revival, and the growing number of observant Muslims in Indonesia, the Jakarta Charter became an issue again. The proposal was supported by the PPP and the Masjumi successor PBB. (A variant that would, at least ostensibly, privilege no particular religion was advanced by the Islamist PK.) There was no hope of finding a two-thirds majority for any change in the *dasar negara*. PDI-P was vehemently opposed, Golkar aspired to be a catch-all party, and PAN's leader Amien Rais wished to attract non-Muslim votes in a presidential campaign. Those three parties alone controlled a considerable majority in the MPR, and so the proponents of the Jakarta Charter were content to put their position on record and let it go at that. Islam would have to find other ways into the structure of the polity. As we shall see, it has.

OVERCOMING HISTORY?

Despite the radical nature of the changes, it would be wrong to think Indonesia had overcome its historical phobias. The 1999 election and its fragmented outcome reinforced the strong aversion of the MPR to a parliamentary system, even as the MPR and DPR practiced a rather shrill form of legislative-dominated government in the first years after 1999. When a Team of Seven member suggested a parliamentary design, PAH I rejected it out of hand.[124] That issue was simply not debatable. Therefore, the only question was how to structure the choice of the president and the powers to be held by the executive and legislative branches. Because of historical constraint, the issues were narrower than they seemed, right from the outset.

At that point, the problem became the method of electing a president supported neither by a fragmentary plurality nor by an ascriptive majority or near-majority. The first criterion, driven by Indonesia's historical fear of fragmentation, led to the majority requirement; the second, driven by fear of Javanese domination, again grounded in history, and by fear of Islamic domination as well, led to the distribution requirement. Agreement on

[124] F.N. 2:156 (a Team Tujuh member). Every time I raised the parliamentary possibility, it was clear that it was not on the table and would not be placed there.

these requirements, however, was not a matter of logic but of political interest, PDI-P's and Golkar's more than others', and of political skill. PDI-P frequently misassessed its interest and proved inconstant in its preferences. Golkar, on the other hand, proved flexible enough to make compromises and then to benefit when they fell apart and allowed Golkar ultimately to obtain something closer to a whole loaf than to the fraction it had been willing to accept. In the end, Golkar gained nearly everything it sought: direct election, an anti-Java feature, limited impeachment grounds, judicial involvement in the impeachment process, a strong president facing a strong parliament, and – a matter we shall deal with soon – a regional house, albeit a very weak one.[125] All that remained then was to solve the second-round problem. We have seen that it was solved as it was because MPR involvement in the selection process was believed to present more problems than a runoff was likely to present and because, by this time, when so many other powers had passed from the MPR's hands as a result of direct election of the president, retention of this one appeared thoroughly anomalous. The PDI-P old guard, which might have obtained a more favorable deal earlier, was in no position to cavil – or, more precisely, when it caviled it could be ignored. The basic structures of the new system were in place.

There was no overcoming history. The presidential electoral formula reflected what most Indonesian political leaders had sought persistently to avoid: fragmentation, on the one hand, Javanese domination or Islamic domination, on the other.

[125] For the Golkar program, I am drawing on separate interviews with the leading Golkar participants in the constitutional process. F.N. 2:129–33, 2:136–37, 2:138–40.

5

Anomalies, Ironies, Regularities, and Surprises

As the new regime began operations in earnest, it became possible to view the first consequences of the decisions that had been taken. Regional autonomy took hold quickly. In many regions, there was great enthusiasm to exercise the new powers, in some cases to go beyond what was granted, and in some subregions to obtain full regional status. It was also possible to identify some design anomalies in the devolution scheme that derived from apprehensions about the consequences of decentralization for a united Indonesia. With the national elections of 2004, the new party system underwent some changes, not particularly in the direction of the drafters' intentions. There was somewhat greater fragmentation of the party system, and direct election of the president helped to reduce voters' party loyalties and increase the overall fluidity of the system. The presidential electoral system did not, in one respect, work as intended, but it did produce broad national appeals and strong, mixed tickets – so strong, in fact, that the vice president's power could be greater than anyone had envisioned it might be. Institutional design, the first results confirmed, is a soft science.

THE DEVOLUTION REVOLUTION

The radical devolution that had been enacted before the 1999 DPR election and was later constitutionalized produced great ambivalence in the MPR about the powers of the second house. It was agreed early on that there would be a house to represent the regions. By 2000, its main contours

were also envisioned across party lines.[1] There would be equal representation of each province and a house much smaller than the DPR. The DPD would be elected, but perhaps by a nonpartisan process, and its powers would be strictly limited. A weak DPD was a non-negotiable condition for PDI-P, which, with its civilian and armed forces allies, was easily able to block amendments.

That is more or less where things came out. The Third Amendment established a DPD with an equal number of representatives from each province, a total membership not to exceed one-third of the total membership of the DPR, and a curiously framed set of powers: the power "to propose to the DPR" bills concerning regional autonomy, relations between central and local governments, the shape and number of regions, management of natural and other resources, and the fiscal balance between the center and the regions. The DPD also "shall participate in the discussion of " bills relating to these subjects, "oversee the implementation" of laws on these subjects, and "provide [advisory] consideration to the DPR" of bills on the budget, taxation, education, and religion.[2] DPD members were to be elected as individuals, without party labels.[3]

The DPR was to hold all the legislative power,[4] including some that was said to be conducive to inefficiency and delay.[5] Even the anemic functions accorded to the DPD were a source of consternation to PDI-P, with its centralist inclinations. Fear of federalism had been an enduring concern for the party. On the other hand, parties with Outer Island bases were strongly attached to the regional house; and its limited powers, part of a Golkar compromise with PDI-P,[6] were also subject to criticism from outside experts when they were being considered by PAH I.[7]

[1] I am drawing on interviews with several politicians involved in the PAH I process and a Tim Tujuh member. F.N. 2:83, 2:94-95, 2:152-53, 2:185.

[2] Constitution, as amended, arts. 22C, 22D.

[3] Ibid., art. 22E(4).

[4] See Andrew Ellis and Etsi Yudhini, "Law on the Structure and Composition of the MPR, DPR, DPD and DPRDs (Susduk Law), Passed by the DPR on 9 July 2003: A Short Guide," NDI, Jakarta, July 16, 2003.

[5] Such as the power to advise on the appointment of ambassadors. See Susi Dwi Harijanti and Tim Lindsey, "Indonesia: General Elections Test the Amended Constitution and the New Constitutional Court," *International Journal of Constitutional Law*, vol. 4, no. 1 (January 2006), pp. 138–50, at pp. 141–42.

[6] Denny Indrayana, "Indonesian Constitutional Reform 1999–2002," Ph.D. dissertation, University of Melbourne Faculty of Law, 2005, p. 277.

[7] Andrew Ellis, "The Indonesian Constitutional Transition: Conservatism or Fundamental Change?" *Singapore Journal of International and Comparative Law*, vol. 6, no. 1 (2002), pp. 116–53, at pp. 136–37; Harijanti and Lindsey, "Indonesia," pp. 143–44.

The criticism did not abate over the years.[8] Most of the critics argued that the DPD should have powers equal to those of the DPR, in order to represent the regions adequately and create a genuinely bicameral legislature. A commission established in 2003 to assess the constitution urged more legislative powers for the DPD, but its recommendations were rejected by the MPR. After the 2004 elections, Golkar, traditionally strong in the Outer Islands, was well represented in the DPD, despite the nominally nonpartisan character of DPD elections. The new vice president, who also became Golkar chairman at the end of 2004, was determined to propose a constitutional amendment according the DPD veto power over legislation concerning regional matters and power to introduce bills on other subjects that the DPR would be bound to consider.[9] In the years following, a drumbeat of support for an amendment to increase the powers of the DPD grew, but it was consistently opposed by PDI-P.

DPD members wanted to turn Indonesia's legislature into a fully bicameral body. No sooner had they secured the one-third of the MPR necessary to propose an amendment in 2007 than the proposal began to lose the support of Golkar, PPP, and PAN. The idea was eventually revived by the president, who seemed to want to use the amendment process to strengthen presidential power – for example, by securing a veto power he did not possess – but the whole matter was eventually put off until after the 2009 election.

The issue, however, did not go away. DPD members continued to push for legislative powers equal to those of the DPR, even including a role in impeachment processes. President Yudhoyono had supported the idea and then reversed himself in 2012.

There is an even more fundamental anomaly in the DPD than its limited powers. Its members are elected to represent provinces, whereas devolution was accomplished at the level of cities and regencies, below the provinces. The provinces possess a significantly smaller share of governmental power and receive a much smaller share of revenue. In many ways, the two subnational levels of government are rivals for power and

[8] See, e.g., Kurniawan Hari, "Experts Call for Power Balance Between DPD, DPR," *Jakarta Post*, January 29, 2003.

[9] See *Straits Times* (Singapore), August 8, 2005. DPD members, claiming greater legitimacy than DPR members because the former are elected individually rather than on a list basis, lobbied hard for expanded powers. See *Jakarta Post*, September 6, 2006; January 30, 2007.

resources.[10] The average province contains 13 cities and regencies; some have more than 30. By contrast, there are only four DPD representatives per province. They are elected without party labels by the single nontransferable vote (SNTV), a system requiring sophisticated party coordination if candidates with similar support bases are not to lose by splitting their vote. In the 2004 election, any such coordination was absent. No DPD candidate had a majority of votes; only four had 20 percent or more; and 62 percent actually won their seats on less than 10 percent of the vote. The same happened in 2009, when the average vote for a winning candidate was 10 percent of the total, and 64 percent won on less than 10 percent. The fact that DPD representatives are few and are elected on small provincial pluralities, whereas localities are numerous, means that most cities and regencies will not have any DPD representation. Members of the DPD will represent, at best, provincial interests or, in most cases, the interests of the particular locality that provides their plurality; and they will be indifferent to others.

A radical devolution is thus offset by a weak regional house that does not represent the principal units to which power is devolved. Indeed, there is a double inconsistency – the second introduced by the SNTV electoral system, which allows representatives to represent a small number of people in a small number of localities rather than either the provinces or the mass of devolved units.

The same ambivalence was manifest in the implementation of devolution itself. The Second Amendment, passed in 2000, had declared that regional governments "shall possess the widest possible autonomy save in the case of those areas which have been reserved to the central government by law."[11] An MPR decree allowed regions to introduce their own implementing regulations if the central government failed to promulgate them in a matter of months.[12] Some elements in the Gus Dur and Megawati governments, however, were unenthusiastic about devolution. In various ways, they dragged their feet.[13] The unitarist PDI-P was not really happy

[10] Early in the decentralization process, there were understandable frictions between governors and local executives, because provincial officials resented the greater power and resources accorded to those nominally below them. See *Jakarta Post*, July 4, 2002, on the complaints of governors about their loss of power.

[11] Second Amendment to the 1945 constitution, August 18, 2000, art. 5, amending art. 18.

[12] MPR Decree IV/2000.

[13] See, e.g., Mark Turner and Owen Podger, *Decentralisation in Indonesia: Redesigning the State* (Canberra: Asia Pacific Press, 2003), pp. 33–35; R. William Liddle, "Indonesia in 2000: A Shaky Start for Democracy," *Asian Survey*, vol. 41, no. 1 (January/February

with the extensive local power afforded by the devolution law,[14] and Megawati's government proposed legislation that had a number of centralizing and undemocratic features.[15] Central government bureaucrats and ministers, reluctant to lose sources of personal revenue, contested various transfers of authority.[16] For quite some time, there was considerable confusion about who had jurisdiction over what. Nevertheless, in 2001, enormous numbers of central government personnel and assets were placed under regional authority; by 2002, monthly grants began. By 2004, a new devolution law was passed, less draconian than Megawati's proposals, but nevertheless subjecting locally enacted regulations to central government review and district governments to the "supervision" of provincial governors.[17]

Devolution proved so popular in the regions that there were demands to create additional provinces and districts. In relatively short order, there were several new provinces and well over 100 new districts. By 2009, a decade after the first devolution law, there were 497 districts, many of them without the human and fiscal resources to provide adequate service to the public and therefore entirely dependent on central government subventions. The proliferation of regions, generally in response to claims for greater ethnic homogeneity or control over natural resources, sometimes reduced violence, but the prospect of creating new regions in heterogeneous areas often produced a race to claim indigenous status in an area, sometimes accompanied by brutal violence against those denominated as immigrants to the area.[18]

2001), pp. 208–20; Sadanand Dhume, "Chaos Rebuffed," *Far Eastern Economic Review*, January 18, 2001, p. 22.

[14] And some wanted to review it. F.N. 2: 171 (a prominent PDI-P member of PAH I).

[15] See Andrew Ellis and Tony du Sautoy, "Proposals for Amendment of UU 22/1999 on Regional Autonomy: A Comment on Draft II," NDI, Jakarta, March 2002.

[16] Forestry officials, for example, tried to recentralize the issuance of logging licenses, a lucrative business, after decentralization.

[17] Law no. 32 of 2004, arts. 38, 40–42, 136–49. See Stewart Fenwick, "Measuring Up? Indonesia's Anti-Corruption Commission and the New Corruption Agenda," in Tim Lindsey, ed., *Indonesia: Law and Society* (2d ed.; Sydney: Federation Press, 2008), pp. 406–29. Laws no. 32 and 33 of 2004 replaced Laws no. 22 and 25 of 1999, which had provided the original frameworks for regional autonomy and fiscal decentralization.

[18] For two fine reports on devolution and violence, see International Crisis Group, "Decentralization and Conflict in Indonesia: The Mamasa Case," Asia Briefing no. 37, Singapore and Brussels, May 3, 2005; International Crisis Group, "Indonesia: Managing Decentralization and Conflict in South Sulawesi," Asia Report no. 60, Jakarta and Brussels, July 18, 2003. See also Riwanto Tirtosudarmo, "State Formation, Decentralisation, and East Sulawesi Province," *CRISE Working Paper no. 56*, Oxford, October 2008, available at: http://www.crise.ox.ac.uk/pubs/workingpaper56.pdf; Gerry

When violence occurred, it exposed additional anomalies in the design of devolution. Foremost among these was the divorce of power and responsibility in keeping order. District executives are responsible for law and order in their areas, but the police are controlled by the central government. A national memorandum of understanding between the police commander and the minister of home affairs alleviated some of the problems created by the divorce; but when local violence occurred, it tended to escalate because of poor policing.

Districts are also confided the power to tax, provided its exercise does not involve duplication of taxes imposed by the central government. In practice, since Jakarta taxes both property and income, localities are often unable to impose taxes. Yet some imposed a confusing array of local taxes and fees, some of them eventually vetoed by the central government.[19] Since districts receive large shares of natural resource revenue, those with control over a resource are better situated than those without such control. This uneven distribution of revenue, in turn, has fueled demands within districts to alter district boundaries so that one locality can gain exclusive control over a local resource and cut out localities that are less well endowed.

Following the dispersion of revenue, there was a decentralization of corruption, as more officials had something to offer in return for a bribe. This was particularly true of regional legislatures, formerly chosen in highly managed elections. Whereas district executives were previously dominant, the transfer of real power to legislators meant that rent seeking had been democratized.[20] Not that regional executives were powerless. A number of ex-DPR members have returned to their regions to become *bupati*s (district heads), presumably because there is money to be had in that office.[21] On the other hand, devolution also brought local judiciaries to life. Local corruption is often quite visible, and judges have occasionally taken drastic anticorruption action unheard of during the New Order period.[22]

van Klinken, "Communal Conflict and Decentralization in Indonesia," Australian Centre for Peace and Conflict Studies Occasional Paper no. 7, Brisbane, July 1, 2007; Jamie S. Davidson, *From Rebellion to Riots: Collective Violence in Indonesian Borneo* (Madison: University of Wisconsin Press, 2008), pp. 118–46.

[19] See Harold Crouch, *Political Reform in Indonesia after Soeharto* (Singapore: Institute of Southeast Asian Studies, 2010), pp. 100–01.

[20] Bert Hofman, Kai Kaiser, and Günther G. Schulze, "Corruption and Decentralization," in Coen J. G. Holtzappel and Martin Ramstedt, eds., *Decentralization and Regional Autonomy in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2009), pp. 99–113.

[21] F.N. 3: 75 (an ex–DPR member).

[22] For a case in which a judge sequestered assets of district councilors charged with corruption, see *Far Eastern Economic Review*, July 22, 2004, pp. 22–23.

Vedi R. Hadiz has depicted decentralization as a project to a large degree hijacked by an array of predatory interests, who skim money from public projects and form partnerships of businessmen and politicians, the former interested in rents, the latter in search of campaign funds.[23] There is evidence in many regions for such a depiction.

In some regions, ex-bureaucrats and local business people, some with criminal connections, gained control of devolved councils, stole funds, rigged contract bids, and managed to benefit in other unlawful ways. In 2004 alone, 352 council members were suspected or charged with misusing their budgetary powers; in a few localities, the majority of council members were involved. Elected PDI-P officials seemed especially vulnerable to temptation after devolution, which may be one reason the party's vote declined precipitously in 2004.[24]

The decentralization also created unforeseen difficulties in attracting foreign investment. Dealing with multiple authorities, especially if the negotiations involved multiple demands for corrupt payments, was a problem right from the start of the autonomy regime, and foreign investors made no major mining investments in Indonesia in the decade following Suharto's fall.[25] In 2009, a new mining law passed by the DPR apportioned authority to manage the mining-licensing process between the central government and local governments, but it permitted them to limit licenses to five-year exploratory periods.[26] Almost no international mining firm, however, was willing to make the heavy investments required in that sector without assurances of long-term contracts. In a 2007–08 survey, mining companies ranked Indonesia's resource endowment as among the best in the world, its regulatory and policy environment among the worst.[27]

There were also reports of a variety of tariff and nontariff trade barriers set up between local authorities, of discrimination in favor of *putera daerah* (sons of the region) and against all outsiders, especially in governmental employment, and of dozens of demands for new localities and new

[23] Vedi R. Hadiz, *Localizing Power in Post-Authoritarian Indonesia: A Southeast Asia Perspective* (Stanford: Stanford University Press, 2010).

[24] Edward Aspinall, "Elections and the Normalization of Politics in Indonesia," *South East Asia Research*, vol. 13, no. 2 (July 2005), pp. 117–56, at pp. 125–26.

[25] *Wall Street Journal*, December 17, 2008.

[26] Law no. 4 of 2009 on Mineral and Coal Mining.

[27] Fred McMahon and Cam Vidler, coordinators, *Fraser Institute Annual Survey of Mining Companies, 2007/2008* (Vancouver: Fraser Institute, 2008), pp. 17, 25, 29, 41.

provinces, many of them eventually granted.[28] Small indigenous minorities, such as forest dwellers and swidden agriculturalists, bypassed by development, may have become more vulnerable to land expropriation or various forms of abuse and neglect as devolved governments sought new ways to raise revenues.[29] The military's territorial commands were also revitalized as a result of decentralization, which placed more resources within their reach.[30] Regional governments had traditionally provided funds to territorial units of the armed forces, but now the regions, receiving enormous allocations from the center, had so much more to offer.[31] This was exceedingly ironic, since the armed forces had been strongly in favor of a centralized state. On the other hand, the first direct election of provincial governors in 2005-06 produced a major defeat for the military, when many retired officers who had held appointed office lost their governorships.[32] Previously, local commanders had been important actors in the selection of governors and had often been selected themselves.

Most troubling for secular nationalists who had opposed devolution was the growing tendency of regional governments, albeit a minority,

[28] See particularly the contributions of Rizal Sukma, David Ray and Garry Goodpaster, Damien Kingsbury, Ismet Fanany, and Minako Sakai to Damien Kingsbury and Harry Aveling, eds., *Autonomy and Disintegration in Indonesia* (London: Routledge, 2003); Turner and Podger, *Decentralization in Indonesia*, pp. 70–72. See also two articles by Vaudine England in the *South China Morning Post* (Hong Kong), July 14, 2002; August 1, 2002. For the relation of corruption to financing local elections, see Takashi Shiraishi, "Indonesian Politics: Current Situation, Future Outlook," *Asia-Pacific Review*, vol. 6, no. 1 (1999), pp. 57–75, at pp. 67–68. On *putera daerah*, the discrimination showed up very quickly, especially against people who had come from other areas under the old regime's transmigration policy. F.N. 2:16 (a drafter of the devolution law); F.N. 2:75 (an authority on the effects of internal migration in Indonesia).

In Bali, the implementation of devolution below the provincial level exacerbated certain cultural conflicts among Balinese Hindus and between them and Muslim and Christian migrants to the island, resulting ultimately in an unfulfilled demand for special autonomy for the province. The proposal envisioned the imposition of Hindu religious law, just as Aceh's special autonomy allowed the imposition of Islamic law. Martin Ramstedt, "Regional Autonomy and Its Discontents: The Case of Post-New Order Bali," in Holtzappel and Ramstedt, eds., *Decentralization and Regional Autonomy in Indonesia*, pp. 329–79.

[29] Christopher R. Duncan, "Mixed Outcomes: The Impact of Regional Autonomy and Decentralization on Indigenous Ethnic Minorities in Indonesia," *Development and Change*, vol. 38, no. 4 (July 2007), pp. 711–33.

[30] John McBeth, "The Military Fans Out," *Far Eastern Economic Review*, September 26, 2002, pp. 22–23.

[31] Harold Crouch, *Political Reform in Indonesia after Soeharto*, p. 165.

[32] Marcus Mietzner, "The Politics of Military Reform in Post-Suharto Indonesia: Elite Conflict, Nationalism, and Institutional Resistance," *East-West Center Policy Studies no. 23*, Washington, DC, 2006, pp. 57–58.

usually at the local rather than provincial level, to enact a variety of regulations ostensibly based on Islamic law. Many issued decrees and circulars requiring Islamic dress, Qur'an reading in government offices, payment of *zakat* (an Islamic tax), and school hours devoted to religious subjects, not to mention prohibition of prostitution, alcohol, gambling, and *khalwat* (close proximity of unmarried couples). Some such prohibitions were enforced in draconian ways, against dissenting sects such as Ahmadis and against law-abiding women out at night or carrying lipstick.[33] In many cases, these measures affected even non-Muslim citizens.[34] The regions have no authority in this realm,[35] but the local popularity of the measures made many leaders reluctant to intervene. These enactments illustrate the tendency for local politicians to go their own way, often to the consternation of central leaders of the same party.[36] Some local and even national politicians, especially from Golkar, were induced to support them,[37] in order to demonstrate their Islamic credentials.

In some cases, local *Shariah* regulations had their origin in a social movement linked to several radical Islamist groups interested in establishing an Islamic state. The movement, led by a Komite Persiapan Penegakan Syariat Islam (Committee for the Implementation of Islamic Shariah), was formed following a congress of radical Muslims, including some associated with incitement to violence. It pushed to make South Sulawesi the second province to adopt *Shariah*, in this case unlawfully, following adoption of *Shariah* by Aceh under its special autonomy powers; and the South

[33] Such women were often presumed, regardless of the evidence, to be prostitutes. For a graphic description of an egregious case, see *South China Morning Post*, July 17, 2006. For critiques of the regional governments' actions, see *Jakarta Post*, March 4, 2006; March 9, 2006.

[34] See Bernhard Platzdasch, *Islamism in Indonesia: Politics in the Emerging Democracy* (Singapore: Institute of Southeast Asian Studies, 2009), pp. 337–38.

[35] Religion is a subject reserved to the central government, and several articles of the amended constitution (arts. 28E, 28I, 29) guarantee freedom of religion. See Law no. 32 of 2004 on Regional Government, art. 10.

[36] On tensions between local politicians and central leaders of the same party, see Vedi R. Hadiz, "Indonesian Local Party Politics: A Site of Resistance to Neoliberal Reform," *Critical Asian Studies*, vol. 36, no. 4 (2004), pp. 615–36, at pp. 624–25.

[37] See Arskal Salim, "Muslim Politics in Indonesia's Democratisation: The Religious Majority and the Rights of Minorities in the Post-New Order Era," in Ross H. McLeod and Andrew MacIntyre, eds., *Indonesia: Democracy and the Promise of Good Governance* (Singapore: Institute of Southeast Asian Studies, 2007), pp. 115–37, at pp. 126–31.

Sulawesi government did in fact approve a pilot project to do this in one regency of the province.[38]

Often the local *bupati* was the main proponent of these measures, and the rather clear motive was electoral.[39] Hence the common adoption of these regulations in some of the most observant regions of the country. By one count, these local regulations had been put in place in 86 districts across 15 provinces.[40] Some of the effects, however, were perverse. One was to give rise to objections from Muslims in an area whose religious practice differed from that sanctioned by the local authorities and so to raise tensions among observant Muslims themselves, especially when heresy cases were brought, as they were prolifically in the Maros district of South Sulawesi. Another was to increase the extractive opportunities available to local officials, who acquired additional power over massage parlors, gambling operations, and bars.[41]

The minister of home affairs, cautious about offending Muslim sensibilities, was slow to respond to these *ultra vires* acts. Despite the suspect origins of some of these measures, there was political danger in opposing them. Instead, their arbitrary enforcement created a negative public reaction. Compulsory deduction of the *zakat* charitable tax from public officials' salaries was indeed held to be unlawful and was overturned, but more effective were public protests against, for example, arrests of respectable women out at night.[42]

Not all localities exceeded their devolved authority, but excesses were, nevertheless, widespread. Even if the devolution law had allowed *Shariah* regulations, they might well be unconstitutional, but the Constitutional Court had no jurisdiction to declare local regulations to be contrary to the constitution. The movement peaked, however, around 2003, and after

[38] See the various contributions to Hikmat Budiman, ed., *Formalisasi Agama, Tantangan Demokrasi Lokal: Temuan Penelitian di Tujuh Kabupaten/Kota di Indonesia* (The Institutionalization of Religion, a Challenge to Local Democracy: Research Findings from Seven Districts/Cities in Indonesia) (Jakarta: Yayasan TIFA, 2007), particularly Subair, "Formalisasi Agama Sebagai Arena Kontestasi: Catatan Kritis atas Gerakan Formalisasi Agama di Bulukumba" (The Institutionalization of Religion as a Contested Arena: Critical Notes on the Movement for the Institutionalization of Religion in Bulukumba), pp. 36–118.

[39] See "Perda Syariah Islam" ("Shariah District Regulations"), mimeo., Jakarta, Yayasan TIFA, n.d.).

[40] Democracy International, "Indonesia – Democracy and Governance Assessment," Final Report Submitted to USAID, June 2008, p. 14.

[41] Platzdasch, *Islamism in Indonesia*, p. 337.

[42] F.N. 3:89 (a close observer of the central government's response to local *Shariah* regulations).

2007, it appears that few or no new regulations were adopted.[43] In general, enthusiasm for adoption of *Shariah* declined as the constitution took hold and as competition from explicitly Islamic parties waned, but extremists were still demanding that regional governments enact *Shariah* regulations as late as 2010.

At the national level, Indonesia has had great success in dismantling jihadist organizations. Many jihadis have been killed or arrested. In May 2010, police raided a training camp and uncovered a plot to seize hotels in Jakarta and assassinate the president and other senior officials.[44] Threats of serious violence were taken seriously, and there were important examples of peaceful coexistence of religions.[45] Yet local-level religious vigilantism was not dead and was not always effectively countered. In Bekasi, near Jakarta, the extremist Islamic Defenders Front, an organization with a record of attacks on bars, churches, and heterodox Muslims, threatened war against local Christians, accusing them of converting Muslims.[46] The police were often quiescent in the face of religiously motivated local assaults, disruptions, and arson. As the national-level threat from jihadis receded, local-level threats did not.[47] We shall return to issues of freedom of religion in Chapter 7.

Two features of the regional autonomy law raised important structural issues. Both were a function of piecemeal reform.

The first concerns elected regional legislatures. Parties participating in regional elections were obliged to meet the requirements of the new political parties law, including the requirement of widely distributed branches in the provinces of Indonesia and the districts and cities of those provinces. This meant that the regions, which the regional autonomy law assumed had distinctive interests and preferences, were to be governed by parties that the political parties law went far to assure had pan-regional, preferably national, scope. As we shall soon see, this contradiction was sharpened when those party registration requirements were tightened for the 2004 and subsequent elections, so as to rule out regional or ethnic parties. Given

[43] See Robin Bush, "Regional 'Sharia' Regulations in Indonesia: Anomaly or Symptom?" in Greg Fealy and Sally White, eds., *Expressing Islam: Religious Life and Politics in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2008), pp. 174–91.

[44] *Democracy Digest*, May 14, 2010, www.demdigest.net/blog/regions/asia/indonesia-anti-democratic-coup-foiled.html.

[45] See, e.g., the benign response of the Islamic University of Indonesia to the discovery of a ninth-century Hindu temple on its campus in Jogjakarta. *New York Times*, February 18, 2010.

[46] *South China Morning Post*, July 2, 2010.

[47] See the good summary by Sidney Jones, *South China Morning Post*, July 16, 2010.

the pluralist rationale for devolution, the persistence of centralist requirements in the regional autonomy legislation seems strongly dissonant.

The second matter pertains to the unfolding character of the reform package. Before the presidential character of Indonesian institutions was really settled, the regional autonomy law was based on parliamentary assumptions. The regional legislature was to select the head and deputy head of the region as a single ticket, and if the executive's conduct of the office was found unacceptable by the regional legislature on two occasions, the legislature was empowered to remove the executive. Indirect election of regional executives and their accountability to the legislature, on pain of removal, was reminiscent of the MPR's powers to elect, compel "accountability speeches" from, and remove presidents for, unsatisfactory performance – all powers that were to be withdrawn from the MPR in the constitutional reform that took place over the next several years. At the time of the regional autonomy legislation, however, no one knew how proposals for direct election, the presidential form of government, and only a limited power to remove a president would fare over the extended process of constitutional change. Subsequently, it was decided that governors, regents, and mayors were to be directly elected. Accordingly, in the 2004 law on regional autonomy,[48] it was provided that the regional legislature could only propose removal of the regional executive. The Supreme Court would have to approve the grounds, and the president was accorded power to remove or not. So the whole process was amended to resemble the process of impeaching and removing presidents.[49]

In one case, then, clashing objectives made for dissonant provisions. In the other, sequencing and the changing balance of political preferences over time did: the felt need to accomplish devolution quickly meant that it would be accomplished based on the old assumptions. But, over time, the latter dissonance was corrected.

In some ways, it is remarkable how regional politics resembled national politics, particularly in executive-legislative relations. Indonesia is a thoroughly heterogeneous country, and local political balances are highly variable. The party fragmentation prevailing at the national level is often replicated, but in varying configurations, at the regional level. The task of a district head or mayor in multiparty regions is to put together a coalition that enables the executive to deal with what may be a plurality of

[48] Law no. 32 of 2004, art. 29.
[49] I am indebted to Blair King for a helpful discussion.

contending interests in the region. Some such interests can render the devolved government ineffective. Not wholly atypically, Bangka district, a tin-mining area, is said to resemble "a small river with a lot of crocodiles" (*sungai kecil banyak buayanya*).[50] The ability of the local executive to defeat rent-seeking behavior in such a situation requires cultivation of the major legislative parties, no matter with which party the executive is affiliated. Often, this involves use of selective incentives, and then husbanding the support gained to insulate local civil servants who deliver the regional head's program. A comparative study makes clear that some executives are more successful than others in accomplishing these tasks.[51]

What stands out is how similar is the task of the district head confronting party fragmentation in the devolved legislature to that of the president confronting the same phenomenon in the DPR. At the regional level, some skillful executives have managed even to gain the simultaneous support of parties as different as PDI-P, Golkar, and PPP. The similarity of governance problems and of the resulting patterns has probably reinforced at both levels a certain fluidity of alignments and ability to transcend party lines, about which there will be more to say in later chapters.

Some of the anomalies referred to earlier, particularly the requirement for parties participating in regional elections to have a national base, were produced by residual centralist inclinations. The development of special autonomy for Aceh and Papua was affected pervasively by the same centralist instincts and the fear of secession. The secession of East Timor had a profound effect on Jakarta, which, seeking to avoid any repetition, offered special autonomy to the two putative secessionist regions.[52] Unlike other provinces, both were devolved power at the provincial level, and much more power was devolved.[53] But here, where it mattered most, there was the greatest equivocation.

Subject to certain checks on its authority, Aceh was accorded power to impose Islamic law and to have some control over provincial police appointments; it was also awarded a large share of revenue from its natural

[50] I. Ketut Putra Erawan, "Tracing the Progress of Local Governments since Decentralization," in McLeod and MacIntyre, eds., *Indonesia: Democracy and the Promise of Good Governance*, pp. 55-69, at p. 62 n. 4.

[51] Ibid.

[52] See Jacques Bertrand, *Nationalism and Ethnic Conflict in Indonesia* (Cambridge: Cambridge University Press, 2004), pp. 200–13.

[53] Law no. 21 of 2001 on Special Autonomy for the Papua Province; Law no. 18 of 2001 on Special Autonomy for the Province of Aceh Special Region as the Province of Nanggroe Aceh Darussalam (NAD).

gas deposits and later the unprecedented power to collect that revenue, rather than having it collected centrally. The central government, however, did not initially give up on a military solution. A truce in December 2002 gave way to renewed violence, and in May 2003 martial law was declared. Megawati and the armed forces were never really convinced that a generous dose of autonomy should be implemented if the territory stood any chance of leaving Indonesia. Only after Aceh was devastated by the 2004 tsunami did its separatist organization make peace with the central government. The Yudhoyono government that emerged from the 2004 presidential election agreed to an exceptional provision that allowed regional parties to participate in local and provincial elections,[54] but only after great reluctance in the Ministry of Home Affairs and among centralist politicians in Jakarta.[55] An effort by regional dissidents and members of several minority groups in the south and west of Aceh to divide the province into two or three would have ended the peace, but this, too, was overcome.[56]

When former rebels won the provincial elections in 2006, the special arrangements for Aceh began to look durable, notwithstanding an upsurge of highway robbery imputed to unemployed former rebels. As in other regions, the price of devolution was enhanced corruption and vigilante excesses in the name of enforcing Islamic law,[57] not to mention a certain amount of resistance to Islamic law by those adversely affected by it. The "vice and virtue patrol" has, not surprisingly, proved to be most unpopular. In 2009, the Aceh provincial legislature, reluctant at first but spurred on by legislators aligned with radical *ulama*, adopted a law prescribing the punishment of stoning for adultery. The governor declared that stonings

[54] Law no. 11 of 2006 on Governing Aceh, art. 65. See *Jakarta Post*, January 24, 2006. For a particularly well-informed treatment of the resolution of the Aceh conflict and the passage of Law 11, see Crouch, *Political Reform in Indonesia after Soeharto*, pp. 219–340.

[55] For resistance to local parties as potentially separatist, see *Jakarta Post*, July 15, 2005; July 20, 2005; October 17, 2005; January 16, 2006; January 19, 2006; January 24, 2006; February 25, 2006.

[56] See International Crisis Group, "Aceh: Now for the Hard Part," Asia Briefing no. 48, Jakarta/Brussels, March 29, 2006, p. 6; ibid., "Aceh: So Far, So Good," Asia Briefing no. 44, Jakarta/Brussels, December 13, 2005, pp. 10–11.

[57] Patrick Barron and Samuel Clark, "Decentralizing Injustice? Centre-Periphery Relations and Local Governance in Aceh," paper presented at the Conference on Federalism, Decentralization and Conflict, Centre for Research on Inequality, Human Security and Ethnicity, Oxford, October 5–7, 2006. On the other hand, the drafting of Islamic regulations proceeded quite carefully from 2000 onward. See Hasnil Basri Siregar, "Islamic Law in a National Legal System: A Study on the Implementation of Shari'ah in Aceh, Indonesia," *Asian Journal of Comparative Law*, vol. 3, no. 1, art. 4 (2008), pp. 1–26.

would not be carried out, and members of secular parties objected to the law, but in the end it was difficult to oppose.[58] Regularity and due process in the administration of *Shariah* punishments have been difficult to achieve. Prohibitions were enacted before judicial procedures were prescribed, creating room for cruelty and extrajudicial punishments in the administration of the law. Although the governor's passive resistance made it harder and harder to carry out *Shariah* punishments – his strategy included starving the vice and virtue patrol of funds – Aceh's extraordinary dispensation provided reasons for many in Jakarta to fear for the future of a tolerant and unitary Indonesia.

Such a fear seemed confirmed by the election in 2012 of a new, hardline Islamist governor in Aceh. A month after the elections, 17 churches were sealed shut in one district of the province, and the local police chief seemed to agree with a new acting district executive that the time had come for church demolitions.

Political competition in Aceh was vigorous.[59] The former rebel movement emerged as the plurality party in 2009, but it could not command a majority in the face of multiparty competition. With Acehnese support divided, minorities such as the Javanese (about 15 percent) have important pivotal power that impedes the development of de facto separatism. The *Shariah* police force reports to the provincial government, but the national police continue to report to Jakarta. Because devolved power in Aceh went to the provincial government, rather than to districts and cities, as it did elsewhere, the province guards its prerogatives, creating great uncertainty about the powers possessed by lower-level governments. Years after special autonomy was created, there were still jurisdictional conflicts, and intense competition before the 2009 elections produced a certain amount of interparty violence.[60] The devolution was not altogether smooth, but the devolved government was functioning.[61]

In Papua, the secessionist armed forces were weaker, but the non-Muslim origins of Papuans and a certain condescension toward them,

[58] For a good account, see *New York Times*, October 27, 2009.

[59] Some of the material in this paragraph is derived from a meeting with Acehnese politicians and officials on November 11, 2008.

[60] See, e.g., the report of grenade attacks on offices of former rebel organizations. *Agence France Presse*, October 22, 2008.

[61] As Edward Aspinall, "The Irony of Success," *Journal of Democracy*, vol. 21, no. 2 (April 2010), pp. 20–34, noted, the electoral success of former Acehnese rebels has meant their incorporation into patronage networks, a benign result from the standpoint of reducing conflict but not for the objective of controlling corruption.

the secession of Christian East Timor in 1999, and financial interests of the armed forces in resource extraction in Papua all heightened reluctance to devolve power.[62] Always sensitive to minority religions, Gus Dur was conspicuously sympathetic to Papuan aspirations during his term; for example, he deferred the division of Papua into three provinces, as authorized by the 1999 Special Autonomy Law. His sympathy toward Papua provoked a negative reaction among centralist legislators, who accused him of fueling secessionism, but devolution to Papua was on his agenda.

Remarkably enough, the 2001 Special Autonomy Law proved to be exceedingly generous to Papua. There had been two competing drafts, one by the Ministry of Home Affairs and one by the Papuan provincial government. Under the influence of Gus Dur and one of his coordinating ministers, a former army commander in Papua who was unusually sympathetic to Papuans, the Home Affairs version was dropped.[63] The Papuan draft, even as ultimately modified, gave broad powers to the province and an array of ethnic-group rights, many at odds with the thrust of Indonesia's aversion to particularism. The governor would be a native Papuan. There would be a Papuan People's Assembly, consisting of Papuans but no members of groups that had migrated to the province, and it would have broad powers to scrutinize provincial regulations. Papuans would be favored in government recruitment, including recruitment to the police, and the province was accorded power to control in-migration. This was an extraordinary piece of legislation.

The Special Autonomy Law survived the removal of Gus Dur, passing the DPR in November 2001. Megawati, however, made clear her hostility to Papuan aspirations. She delayed establishment of the Papuan People's Assembly, leaving the provincial legislative field to a provincial assembly with only a minority of Papuans. Only in 2005 was the assembly established. In contravention of the Special Autonomy Law, which implicitly repealed the earlier law allowing the division of Papua,[64] Megawati sought to divide Papua into three provinces, but eventually settled for hiving off

[62] On the resource issue, see *Wall Street Journal*, August 10, 2007, reporting pressure on Papua's governor by SBY to permit deforestation in Papua to facilitate the development of plantations for biofuels.

[63] This account of the progress of the bill leans heavily on the fine treatment by Rodd McGibbon, "Between Rights and Repression: The Politics of Special Autonomy in Papua," in Edward Aspinall and Greg Fealy, eds., *Local Power and Politics in Indonesia: Decentralisation and Democratisation* (Singapore: Institute of Southeast Asian Studies, 2003), pp. 194–213.

[64] Law no. 45 of 1999.

only West Papua.[65] Division of Papua had been attempted earlier, but that was designed not only to dilute Papuan power but also to dilute the power of Papua's Golkar governor before the next elections.[66] The Papua legislature rejected the effort, and finally (in 2004) the Constitutional Court seemed to settle the matter against Megawati's divisive scheme, but then it held, curiously, that it did not have the power to undo the creation of West Papua.[67] The court's decision was heavily criticized.[68] It was as if the central government had gone out of its way to sow distrust of its intentions and to undercut those in the province who supported an autonomous Papua within Indonesia.[69]

Ultimately, a West Papua province was carved out, despite resistance from leaders of Papua-wide institutions.[70] There was substantial discontent in Papua with the implementation of special autonomy and with the presence of migrants from other parts of Indonesia.[71] At the same time as troops were withdrawn from Aceh, they were being augmented in Papua, underscoring that special autonomy meant something different there. Worse yet, pro-Jakarta militias were organized in Papua by an officer indicted for crimes against humanity in East Timor,[72] suggesting that the

[65] Presidential Decree no. 1/2003; ibid., no. 21/2003. The decrees contravened article 76 of the Papua Special Autonomy Law, which provides that division of the province can proceed only with the approval of Papuan legislative institutions, one of which was not even set up until 2005.

[66] See International Crisis Group, "Dividing Papua: How Not to Do It," ICG Asia Briefing Paper, Jakarta and Brussels, 9 April 2003; International Crisis Group, "Indonesia: Ending Repression in Irian Jaya," ICG Asia Report no. 23, Jakarta and Brussels, 20 September 2001. Megawati had also been hard on Laskar Jihad, the Islamist paramilitary that had engaged in mass ethnic killing in Maluku, but she seemed to have no objection when it and other militias reestablished themselves in predominantly Christian Papua, with the apparent connivance of elements of the armed forces.

[67] *Putusan Perkara Nomor 018/PUU-1/2003, Dimuat Dalam Berita Negara Republik Indonesia Nomor 95 Tahun 2004, Terbit Hari Jumaat tanggal 26 November 2004* (Decision on Matter Number 018/PUU-1/2003, contained in Republic of Indonesia Gazette Number 95 of 2004, published Friday 26 November 2004).

[68] See *Jakarta Post*, November 12, 2004.

[69] Also arguably in contravention of the Special Autonomy Act, the central government began antiseparatist police actions without consulting the provincial authorities. *South China Morning Post*, July 30, 2002. And, in 2003, Jakarta appointed to command the Papuan police force a police general who had been accused of crimes against humanity in East Timor. The appointment provoked strong international reaction. *Far Eastern Economic Review*, December 18, 2003.

[70] Elections for governor in Papua and West Papua were held in 2006.

[71] See, e.g., *Jakarta Post*, August 22, 2005. As Megawati's actions in Papua seemed designed to thwart Golkar there, the actions of the government elected in 2004, with its Golkar vice president, seemed designed to help that party there. See *Jakarta Post*, November 7, 2005.

[72] *South China Morning Post*, July 30, 2007.

central government had not yet learned that indiscriminate violence had helped it lose East Timor and forced it to accept an unpalatable devolution in Aceh. An Achilles' heel of Indonesian democracy remains control of the armed forces in minority areas on the periphery.

The Papuan autonomy law equivocates on the nature of Papuan political parties. In the very same article that promises Papuan parties freedom to "give priority to Papua natives," the statute provides that the "procedure for the formation of political parties and participation in the general election shall be in accordance with statutory regulations."[73] That is, Papuan parties, unlike Acehnese parties, must meet the same nationwide distribution requirements as all other political parties.

There is a strong case to be made that, although Papua's armed rebellion against Jakarta has been much weaker than Aceh's, Papuans have had greater difficulty than Acehnese in accepting and finding their place in Indonesia. There are still periodic displays of pro-independence sentiment and sporadic acts of violence. Papuan nationalism had developed between 1940 and 1962, when the territory acceded to Indonesia in an act of dubious legitimacy.[74] The Christian affiliations of many Papuans, the presence of abundant resources, and a general lack of cultural sympathy with a distant people on the periphery have, as indicated, produced a considerable amount of arbitrariness. Migrants from Java, Sulawesi, and Maluku, as well as some indigenous Papuan minority groups, were pleased by the creation of the new West Papua province, as were military and intelligence personnel, eager to control Papuan separatism, manifested as it is in periodic outbreaks of violence. Significant Papuan organizations and even some prominent officials are convinced that Papua's special autonomy has failed.

Devolution stands out as an area in which, over time, the creators of the new Indonesian constitution did not succeed in ironing out anomalies. That is principally because the contradictions were not produced solely by the piecemeal character of the reform, but rather by genuine ambivalence and persistent political-party interests. Despite outright hostility to anything resembling federalism, central authorities were reluctant to confront head-on *ultra vires* action where Islam was implicated. The acknowledged

[73] Compare Law 21 of 2001, art. 28(3), with art. 28(2) of the same law.

[74] See Jacques Bertrand, "Indonesia's Quasi-Federalist Approach: Accommodation amidst Strong Integrationist Tendencies," *International Journal of Constitutional Law*, vol. 5, no. 4 (October 2007), pp. 576–605, at pp. 579, 590, 594–99. In Chapter 6, we shall consider the feedback effects of provincial and regional elections under these rules on the overall party and governmental system that has emerged.

need to decentralize was offset by the deep-seated fear of fragmentation, which produced dissonance between powers and funds granted principally to districts and a very weak DPD based on provinces, as well as elections to devolved bodies and offices that, except in Aceh, could be contested only by candidates from officially registered, nationally based parties. In two cases – Aceh and Papua – devolution was to the provincial level, but the potential impact of those extraordinary dispensations was more or less nullified by the recurrent attempts of the central government to undermine the efficacy of both Special Autonomy laws – attempts substantially reversed only in the case of Aceh. All in all, a radical devolution offset by action taken because of apprehension of its radical possibilities.

PERSISTENT APPREHENSION AND INCUMBENT SELF-INTEREST: THE REVISED PARTY AND ELECTION LAWS

The usual impulses returned as the party and electoral laws began to be rethought in 2000. Members of the Team of Seven were initially put in charge of proposing changes. Again, they preferred first-past-the-post elections, to encourage constituency responsiveness as well as to reduce the number of parties.[75] Many in the DPR favored the idea. The PDI-P, however, generally opposed it, although, as the largest party, it would have benefited enormously from plurality elections.[76] Again, Megawati, slow to recognize her interests, displayed low megawattage.

The first proposals envisioned plurality elections in multimember constituencies, but they were heavily criticized. Among the concerns was that constituency elections would encourage regionalism, always a bête noire of the Jakarta elite. The issue then returned to the Ministry of Home Affairs, which reconsidered it after Megawati became president.

In mid-2002, the ministry produced two draft laws, one each on parties and elections. There was still concern about the proliferation of parties, and the draft parties law reverted to onerous registration requirements similar to those of the 1999 draft. Only six parties would have qualified for the 2004 elections under those rules. CETRO and some other civil society

[75] F.N. 2: 156–57 (a Team of Seven member).

[76] From interviews with legislators of several parties, it was clear that few favored PR on grounds of principle. Many wanted to shift to first-past-the-post. F.N. 2:49, 2:51, 2:77, 2:160, 2:187. Not all PDI-P legislators opposed plurality elections, but some feared gerrymandering if constituency-based elections were adopted, while others were concerned about victories of candidates opposed by most voters and the cultivation of regional and local loyalties that constituency-based elections fostered. F.N. 2:84, 2:86, 2:17.

organizations campaigned against the draft, asserting that their limitations on parties and candidates, as well as certain other features, were illiberal.[77] The draft appeared to create formidable barriers to entry for new parties.

The electoral system proposed in the draft was open-list proportional representation. Each constituency was to have between five and nine members, but it was unclear whether each province would be a single multimember constituency or whether larger provinces would be divided.[78] If larger provinces were divided, it was unlikely that more than five parties would each be able to win more than one percent of the seats.[79] The fear of too many parties, so obvious in the requirements for party registration, could in fact easily be allayed by opting for constituency lists with relatively small numbers of members to be elected in each constituency. The cure for a fragmented legislature was low district magnitude and less proportionality.

The party registration requirements were modified, but not eliminated, in the final version adopted by the DPR. A party would now need to have a committee in at least half the provinces, half the districts or municipalities of those provinces, and a quarter of the subdistricts in those districts or municipalities.[80] Parties that won DPR seats might be entitled to financial assistance from the state.[81] The new law was not quite so draconian, but it was strongly biased against small parties and new parties. Regional and ethnic parties were effectively prohibited,[82] except for provincial and regional elections in Aceh.

More important than requirements to register as a party were requirements to contest elections. The 50-percent registration thresholds of the parties law were raised to two-thirds for parties wishing to run candidates.[83] Existing parties, however, automatically qualified if they held two percent of DPR seats (three percent for subsequent elections).[84] So the new

[77] See *South China Morning Post*, July 29, 2002. Among other things, the draft appeared to contravene a constitutional provision requiring an independent election commission by placing the commission inside the Ministry of Home Affairs.

[78] See Andrew Ellis, "The Proposed Revised Electoral Law: A Commentary on the Final Depdagri Draft of 23 May 2002," NDI, Jakarta, July 29, 2002.

[79] Andrew Ellis, "A Simulation of the Electoral System Proposed in the Depdagri Draft Electoral Law Submitted to the DPR," NDI, Jakarta, August 22, 2002.

[80] Law no. 31 of 2002 Concerning Political Parties, art. 2.

[81] Ibid., art. 17, and the appended Elucidation to art. 17.

[82] This was not due to explicit provisions to that effect, but rather because of the requirements that parties establish branches virtually all over the country.

[83] Law no. 12 of 2003 Concerning General Elections, art. 7.

[84] Ibid., arts. 9(1)(a), 142.

law grandfathered the top six parties in the DPR. The DPR also opted for smaller constituencies. Constituencies were composed of provinces or parts of provinces, each constituency containing between three and 12 seats.[85] This feature, too, enhanced the position of larger parties, because, on average, it would require a significantly larger percentage of the vote to win a seat than had been required in the larger constituencies of 1999. Wherever possible, however, the electoral commission decided to create constituencies of six to 12 members, in order to provide greater proportionality, among other objectives.[86] If previous voting patterns held, the five largest parties stood to gain about 98 percent of the seats, rather than the 90 percent they had won in 1999.[87] As we shall soon discover, however, the voters did not oblige in 2004. Consequently, as the 2009 elections approached, there was again considerable pressure from larger political parties to enact rules that would reduce the number of parties in the legislature, and it persisted after those elections.[88]

For 2004, the balance of seats between Java and the Outer Islands was revised to 55:45, from 52:48 in 1999, bringing it a bit closer to the population balance. This may have reflected the creation of the DPD, with equal representation from each province, in order to espouse regional interests and implicitly to offset Javanese legislators in the DPR. It certainly responded to criticisms from Java-heavy parties after the 1999 election.[89]

A relic of thinking about offsetting the influence of party elites was a provision for open-list voting,[90] rather than the previous closed-list system. The open-list idea came from the Ministry of Home Affairs and was opposed by Golkar and especially by PDI-P, which was the last party to accept it.[91] But the intention to use open lists to obtain constituent accountability without first-past-the-post was equivocal at best. For a candidate to win a seat on this basis required winning a full quota,[92] a nearly impossible feat, achieved by only two candidates in the whole country; there was no provision for an individual to win a seat this way

[85] Ibid., art. 46 and the appended Elucidation to art. 46.
[86] Bob Dahl, "Proportional Representation System in Indonesia's April 2004 Legislative Elections," paper presented at the American Enterprise Institute, Washington, DC, December 6, 2005.
[87] Andrew Ellis, "Simulation of Different Average MMD Sizes" [and Simulations of Results under the New System], NDI, Jakarta, April 7, 2003.
[88] See Chapter 6, below.
[89] For example, the PKB. F.N. 2:152–53.
[90] See Law no. 12 of 2003 Concerning General Elections, Elucidation to art. 84.
[91] *Jakarta Post*, January 29, 2003.
[92] Law no. 12 of 2003, art. 107(2).

on a remainder. And so what purported to be open-list PR was really closed-list PR. Once again, the bottom-up impulses associated with the Team of Seven were defeated.

Candidates for election to the regional house, the DPD, were to stand as individuals, not as party representatives, in order "to accommodate regional aspirations,"[93] since regional parties are forbidden. As we have seen, each province was to elect four DPD representatives, on the basis of the single nontransferable vote.[94] Each voter was given a single ballot to cast for an individual candidate. The four candidates with the largest number of votes, no matter how small that number, would be declared elected. If the framers of the law intended to foster an individualistic, nonprogrammatic politics in the regional house, they could scarcely have chosen a better system than the single nontransferable vote.[95]

By electing the DPD on an ostensibly nonpartisan basis and by adopting a system fostering individual candidate rivalries, the DPR drafters sought to avoid having to recognize regional parties, against which they had been dead-set from the beginning, and presumably also to quarantine their own parties from the separatist sentiment that could be expressed in the DPD. No doubt they also hoped to impede development of a threatening regionalist agenda in the DPD, an intention also gleaned from the limited powers accorded that body.

Discernible in all this electoral engineering is the recurrent theme of re-centralizing politics, obvious since the devolution of 1999. There is also pro-incumbent bias visible in the thresholds for participation.[96] The two themes are not at odds, since the incumbent leaders saw themselves as heading national parties that could be threatened either by internal fission or by external competition if first-past-the-post, or truly open lists, or lower thresholds for participation, or regional parties in the DPD were to be permitted. For the incumbents, self-interest and national interest were one.

[93] Ibid., Elucidation to the General Provisions.

[94] Ibid., arts. 84(2), 109.

[95] Thailand's 1997 constitution provided for an upper house chosen by nonpartisan SNTV, so there was regional precedent for this structure. Afghanistan also decided to choose its legislature by SNTV, an electoral system previously in force but then abandoned by Japan, Taiwan, and Korea. Jih-Wen Lin, "The Politics of Reform in Japan and Taiwan," *Journal of Democracy*, vol. 17, no. 2 (April 2006), pp. 118–31, at p. 130 n. 2. The Afghan choice was heavily criticized by outside experts, and it also produced some perverse results. For the critique, see Andrew Reynolds, "The Curious Case of Afghanistan," *Journal of Democracy*, vol. 17, no. 2 (April 2006), pp. 104–17.

[96] For explicit emphasis on these themes, I am indebted to a personal communication from Andrew Ellis, July 6, 2003.

BREACHING THE BARRIERS TO ENTRY: THE 2004 ELECTIONS

Intentions are one thing; effects are another. The 2004 elections were the culmination of the constitutional reforms. While the five largest parties of 1999 remained strong performers, and the total number of parties winning one or more seats declined, among major parties the results in the 2004 DPR elections were actually more dispersed. Whereas the top five parties in 1999 had 86.5 percent of votes and 90 percent of elected seats, the same five in 2004 had only two-thirds of the votes and under three-fourths of the seats, fewer than the top four parties had won in 1955. The results are depicted in Table 2.

All but one of the top seven parties received a seat bonus in 2004 because of the smaller constituencies. The one that did not, PKB, was hurt badly: with 60 percent more votes than PAN, it won the same number of seats. With its geographically concentrated support, PKB had the misfortune to win most of its seats on full quotas; with its dispersed support, PAN had the good fortune to win nearly all of its seats on largest remainders. Despite the seat bonus, the top four parties in 1999 lost both votes and seats in 2004. The principal loser was PDI-P, which suffered a great decline and became a Java-based party as a result of

TABLE 2. *Votes and Seats, Major Parties: DPR Elections, 1999 and 2004 (in percentages)*

	1999		2004	
Party	**Votes**	**Seats**[a]	**Votes**	**Seats**
PDI-P	33.7	33.1	18.5	19.8
Golkar	22.4	26.0	21.6	23.1
PKB	12.6	11.0	10.6	9.5
PPP	10.7	12.6	8.2	10.5
PAN	7.1	7.4	6.4	9.6
PK(S)[b]	1.4	1.5	7.3	8.2
PD[c]	– –	– –	7.5	10.2
PBB	1.9	2.8	2.6	2.0

[a] Elected seats only.
[b] The PK, no longer eligible to participate in 2004, re-registered itself as the PKS for that election.
[c] The PD, the party of 2004 presidential candidate Susilo Bambang Yudhoyono, was a new party, organized before that election.

Megawati's dramatic loss of popularity.[97] Many of PDI-P's lost voters moved to the new Partai Demokrat of Susilo Bambang Yudhoyono, commonly called SBY, a retired general who became a charismatic presidential candidate. Like PDI-P, the PD was described as a secular nationalist party. The other party that took votes away from established parties was the PK, renamed PKS (Partai Keadilan Sejahtera or Prosperous Justice Party), an Islamist party with a strong anticorruption platform and a strong base in universities. PKS pulled support from PAN and other parties in the modernist Muslim stream and actually came in first in Jakarta.[98] There it gained more than 20 percent of the vote, as it did in several other large cities.

After the 2004 election, there were 7.11 effective parties in the DPR, a considerable increase over the 1999 election. The dispersion of results in 2004 suggests that the drafters were not wrong to worry about fragmentation, but they may not have been aware of one of its potential sources: direct presidential elections. The campaign for the presidency introduced a personalistic element. SBY had great personal appeal. As Megawati's popularity declined, it became possible to think that SBY might win the presidential election. SBY's popularity produced some defections to his new PD in the DPR election. Clearly, that was not the only cause of the dispersion, for many secular-nationalist voters deserted PDI-P without moving to PD, and some Muslim voters were willing to migrate from one Muslim party to another. Yet SBY and his new party were a significant cause of the dispersion. The presidential system had the unintended effect of furthering electoral fragmentation.

Historically, the Indonesian party system was differentiated along lines dictated by religious and ideological streams. The streams were still visible, but now there was interparty competition within each stream. In 2004, three major parties competed for the secular nationalist vote, just as several competed for the modernist Muslim vote and the traditionalist Muslim vote. The large party with the most stable support from 1999 to 2004 was Golkar, which, although generally identified as secular nationalist, was least synonymous with any single stream and most resembled a catchall

[97] Even in PDI-P's stronghold of Bali, where the party received 79 percent of the vote in 1999, it won only 52 percent in 2004.

[98] See Aris Ananta, Evi Nurvidya Arifin, and Leo Suryadinata, *Emerging Democracy in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2005), pp. 53, 56, 58. For an excellent depiction of PKS, see Farish A. Noor, "The *Partai Keadilan Sejahtera* (PKS) in the Landscape of Indonesian Islamist Politics," RSIS Working Paper no. 231, Singapore, November 30, 2011.

party, with its support now about equally divided between Java and the Outer Islands.[99] But Golkar's stability was the exception: what was most visible in 2004 was fluidity of voter allegiances, at least at the margin and sometimes well beyond it.

The fluidity of allegiances was also manifest in voter opinions after the parliamentary election but before the presidential election of 2004. Although Yudhoyono's PD, like secular-nationalist parties in general, had the support of many Christians, SBY was the declared second choice not only of PDI-P voters but also of voters from four Muslim parties: PAN, PKS, PPP, and PKB.[100] This may be a function of the limited second choices they enjoyed in the presidential race, for their most plausible alternatives, apart from the unpopular sitting Islamist vice president, Hamzah Haz, were two other secular nationalists, Megawati and General Wiranto. At the very least, the popularity of SBY among convinced Muslims suggested that party allegiances did not absolutely preclude jumping across streams.

Nearly three-quarters of the DPR elected in 2004 were newcomers. Yet pre-reform political leaders and styles of doing political business managed to survive reasonably well.[101] The armed forces did not interfere in the elections, but retired military officers were featured on several presidential tickets, including the winning one. These were free elections, in which the voice of the voters was heard, and heard unequivocally. There was accountability but with a flavor of continuity.

THE MAJORITY REQUIREMENT FOR PRESIDENT IN A FRAGMENTED PARTY SYSTEM

To be elected, it should be recalled, a president and vice president, running on a single ticket, are required to win more than 50 percent of the total vote plus 20 percent in at least half the provinces. If no ticket is able to meet both requirements, there is to be a runoff between the two highest-polling

[99] Ananta, Arifin, and Suryadinata, *Emerging Democracy in Indonesia*, p. 43. Golkar drew 53 percent of its votes from Java, but voters from Java accounted for 62 percent of all voters.

[100] See National Democratic Institute, "The People's Voice: Presidential Politics and Voter Perspectives in Indonesia," NDI, Jakarta, mimeographed, June 2004. The study, it should be noted, was based not on a random sample but on focus groups that expressed views in May 2004. In the actual election, SBY drew substantial support from Golkar, PAN, PPP, and PDI-P voters.

[101] For some examples, see Aspinall, "Elections and the Normalization of Politics in Indonesia," pp. 136–38.

tickets. The presidential electoral law provided that only parties or coalitions of parties with three percent of DPR seats or five percent of votes in the DPR election could nominate candidates for president and vice president in 2004.[102]

The majority requirement to win had profound effects on the formation of presidential tickets in 2004. Since even the largest party in the DPR had won less than a quarter of the votes and seats, it was obvious that tickets would need to span party and ideological lines. The major presidential contenders chose running mates with complementary rather than similar party and ideological pedigrees. Contrary to the prevailing assumption at the time of adoption, however,[103] the majority requirement did not necessarily induce candidates to produce regionally balanced tickets. Three Javanese candidates, including Megawati, who is part-Javanese, also chose other Javanese as running mates; and Megawati made low-key ethnic appeals to Javanese voters.[104] But secular SBY chose Jusuf Kalla, a devout Muslim from South Sulawesi, an Outer Island businessman with a strong base in Golkar. The unlikelihood, in the configuration of party support, that any ticket could reach 50 percent in the first round meant that the 20-percent distribution requirement, abandoned in second-round computations, became largely irrelevant in most candidates' preelectoral calculations. Kalla's strong following within Golkar may have been as important as his provincial origins. Although the system is a hybrid French and Nigerian one, the majority threshold swamps the distribution requirement in the incentive structures of candidates once they see that the only first-round statistic that will count is the number of votes required to qualify a ticket for the runoff. Nigeria met France in Indonesia, but France won.

The 50-percent rule, however, creates its own exigencies. Even homogeneous regional tickets – meaning Javanese or Outer Island – would probably have to cross religious-secular lines to win in the second round. This also implies that tickets would have to cross party lines. The result in 2004 was an array of interparty tickets. This, coupled with dissatisfaction with Megawati, even among PDI-P supporters, and SBY's personal appeal,

[102] Law no. 23 of 2003 Concerning Election of the President and Vice President, arts. 5, 101. This is why DPR elections must precede presidential elections. The three and five percent figures were to be raised to 15 and 20 percent, respectively, for subsequent elections.

[103] F.N. 2:90. A major theme in discussions of presidential electoral systems had been the need to avoid Javanese domination. F.N. 2:53, 2:55.

[104] "Candidates Play on Their Roots to Win Potential Voters' Hearts," *Jakarta Post*, June 16, 2004.

reflected and contributed to interparty fluidity. With Jusuf Kalla on the ticket, pious Muslims could vote for secular SBY.[105] Traditionalist Muslims could vote for Golkar's secular candidate, General Wiranto, who had chosen Gus Dur's brother as his vice presidential candidate. The ticket had the blessing of the PKB. Megawati also had chosen a traditionalist vice presidential candidate. "I see a great deal of promiscuity in Indonesian politics. Anyone can get married to anybody," Dewi Fortuna Anwar said, referring to "unholy alliances of secular and religious parties." The cleavage that had threatened to produce civil war in November 1998 was bridged by the single-ticket and 50-percent requirements. After the election, it would be bridged again as cross-cleavage coalitions formed in the DPR.

The MPR drafters of the constitutional requirements were thinking in general terms of a president who would have legitimacy because of having achieved majority support, and they also hoped for tickets that would bridge differences in general. What they actually accomplished was a considerable blurring of party lines. For example, Jusuf Kalla and Amien Rais' vice presidential candidates, both Golkar men, were not standing on the ticket of Golkar's presidential candidate, who himself had chosen a non-Golkar vice presidential candidate, just as Megawati had chosen a non-PDI-P candidate. Interparty tickets were, of course, envisioned by the drafters,[106] but only some envisioned combinations of opposites on the old model of Sukarno (Javanese *abangan*) and Hatta (Sumatran devout Muslim). During the design of the presidential electoral system, Amien Rais had hoped to put together a ticket representing all the Muslim parties, which could win in the second round.[107] And if Megawati had retained her popularity, an all-PDI-P ticket might also have won in the second round. So, for that matter, might an all-Golkar ticket, had the party increased its share of supporters from 1999 onward.

What happened instead was that the ticket located at different parts of the cultural spectrum – SBY and Jusuf Kalla – won the first round, with a

[105] Actually, SBY had come from a rather religious family but was nevertheless seen as being in the secular camp.

[106] A survey of MPR members in 1999–2000 revealed that 64.7 percent believed the president and vice president should come from different parties. CETRO, "Result of Polling of MPR Members, November 1999–January 2000" (mimeographed, Jakarta, 2000), p. 4.

[107] *South China Morning Post*, July 31, 2002. This was a vain hope. When Amien planned to run in 2004, neither PPP nor PBB nor PK would support him, as Marcus Mietzner pointed out in his *Military Politics, Islam, and the State in Indonesia: From Turbulent Transition to Democratic Consolidation* (Singapore: Institute of Southeast Asian Studies, 2009), p. 273.

third of the vote to Megawati's 27 percent and Wiranto's 22 percent. The SBY-JK ticket then won the runoff by 61 percent to 39 for Megawati. In the second round, the winning ticket swept 31 of 32 provinces, about a third of them with more than 70 percent of the vote. The geographic heterogeneity of the ticket certainly paid off. Importantly, SBY and Kalla prevailed despite the fact that Golkar formally supported Megawati in the runoff after Golkar's own presidential candidate placed third in the first round. This victory was possible precisely because of the fluidity of voters' party allegiances, already visible in the 2004 DPR elections, as well as a factional split within Golkar.

The personal character of the vote was demonstrated by the landslide Yudhoyono-Kalla victory in the second round despite the support of a four-party coalition representing a majority of both legislative seats and votes for the Megawati-Hasyim ticket. The coalition initially supporting SBY comprised a mere one-fifth of all legislative seats and votes. The SBY ticket even managed to secure large fractions of votes from supporters of parties committed to other candidates in the first round.[108] Fully 82 percent of Golkar supporters and 78 percent of PPP supporters voted for the SBY-JK ticket in the second round, even though their party leaders urged them to vote for Megawati. Even one-third of PDI-P supporters deserted Megawati for SBY in the second round.[109] The personal nature of the vote for president, coupled with the dispersion of candidates of the same party across tickets, Jusuf Kalla's influence in Golkar, and Megawati's decline in popularity, all weakened the party loyalty of voters. Similar tendencies to follow personal rather than party preferences were visible in at least some elections for provincial governor in 2005.[110]

These tendencies did not come from nowhere. They were facilitated by years of cooperation across party lines in the MPR and DPR, as legislators fashioned the new constitutional regime. They were also made plausible by prior party splits and defections in PKB, PPP, PBB, PAN, and PDI-P, and by factionalism in, and discontent with, the leadership of Golkar. As I mentioned earlier, surveys in 2002 showed that even most supporters of particular parties did not believe their parties put the public interest first,

[108] See Ananta, Arifin, and Suryadinata, *Emerging Democracy in Indonesia*, pp. 21, 79–89.

[109] R. William Liddle and Saiful Mujani, "Leadership, Party and Religion: Explaining Voting Behavior in Indonesia," *Comparative Political Studies*, vol. 40, no. 7 (July 2007), pp. 832–57.

[110] See, e.g., *Economist*, June 25, 2005, p. 42, reporting on the election in North Sulawesi.

and in some cases the disaffection was at very high levels.[111] These prior conditions and the inevitable tendency toward personalism in presidential elections made possible the great fluidity manifested in 2004.

Not surprisingly, interparty and intraparty differences among leaders and party supporters brought out by the presidential election made coalitions in the legislature difficult to sustain afterward. At first, parties that had supported Megawati in the runoff (PDI-P, Golkar, PPP, and some smaller parties) decided to form a majority legislative coalition. They took all the leadership positions in parliamentary commissions, thus raising the prospect of divided government. The situation changed dramatically, however, when, in a party election, Jusuf Kalla challenged and defeated Golkar's incumbent chairman, who had led Golkar to its futile support of Megawati's ticket. When Kalla won the chairman's post by a more than two-to-one margin, the majority coalition in the DPR was disrupted. Golkar left the coalition, and SBY's weak position in the legislature – his own party held only 10.4 percent of the seats – was greatly improved. SBY also chose a widely representative cabinet. Golkar was quickly coopted into his government, and smaller parties followed suit after some of their leading members were appointed to the cabinet. Among major parties, only PDI-P was left in opposition.[112]

Even with a majority coalition, the DPR did not become a pliant tool of presidential power. The president prevailed on some issues, occasionally over considerable opposition, but not on all.[113] Despite considerable criticism of his deficiencies in anticorruption enforcement, SBY managed to issue presidential decrees to deal with corruption more effectively than had indirectly elected presidents.[114] The initiating role of the president in the legislative process was not always well received, but it began to take

[111] Page Johnson Tan, "Anti-Party Reaction in Indonesia: Cause and Implications," *Contemporary Southeast Asia*, vol. 24, no. 3 (December 2002), pp. 484–509.

[112] See generally R. William Liddle, "Year One of the Yudhoyono-Kalla Duumrivate," *Bulletin of Indonesian Economic Studies*, vol. 41, no. 3 (2005), pp. 323–38. The PDI-P *fraksi* included the small PDS, a party with 12 seats at the time.

[113] For example, a proposed deregulation of some parts of the labor market was held up, not by PDI-P alone, but by Golkar legislators as well. See Damien Kingsbury, "Indonesia in 2006: Cautious Reform," *Asian Survey*, vol. 47, no. 1 (January–February 2007), pp. 151–61, at p. 156. The same was true for some badly needed infrastructure projects. Yet the president had his way, despite heavy DPR opposition, on an unpopular decision to reduce fuel subsidies, a decision that cost him dearly in public approval.

[114] On this issue, I am relying on a memorandum produced for me by Ong Kian Ming, "SBY and Corruption," Duke University, June 2007.

hold. It helped to have a majority in the DPR, even though the coalition was not uniformly reliable.

Managing the cabinet was not easy when so many had to be satisfied. Parties jostled for ministries, which continued to be valuable sources of party revenue and patronage.[115] Party fluidity and cooperation across party lines had their virtues, as I have suggested, but they were also sources of cabinet instability, especially for a president so dependent on parties other than his own. The magnetic field that formed around a popularly elected president created a new source of power, but it was far short of a power to command.

Two changes are worth underscoring. Both stemmed from direct presidential election.

The first was a partial turn away from the consensus politics that was at the heart of the constitutional reform process. As a result of PDI-P's loss in the presidential election, an incipient government-and-opposition model began to assert itself. Of course, PDI-P had been the party most reluctant to reform the constitution and most willing to deviate from the consensus all along. In any case, with a separately elected president, it was no longer feasible to unite the whole legislature against the president. The president's popularity and appointment power attracted supporters, while his rivals organized opposition in the DPR.

Yet the shift was far from absolute. The legacy of consensus politics was to be found in easy relations across party lines and the willingness of parties to change sides, which mirrored the flexibility of an electorate willing to vote for presidential candidates regardless of party identification. Above all, opposition was limited by lucrative opportunities located mainly in the executive branch.

The second important change was the power of the vice president, which made him a potential rival to the president.[116] After the election, Jusuf Kalla's Golkar controlled more than twice as many DPR seats as the president's own party did. Early in SBY's term, Jusuf played a conspicuous role in dealing with such problems as the rebellion in Aceh. Yet the popular SBY was able to assert his own authority. No doubt, the weakness of the president's party in the DPR enhanced Kalla's value. But the vice president's undoubted power did not derive from anything so idiosyncratic. Kalla was

[115] In Chapter 8, we shall discuss what has come to be called the cartelization of the tangible rewards of politics and its implications for democratic accountability.

[116] Muhammad Qodari, "Indonesia's Quest for Accountable Governance," *Journal of Democracy*, vol. 16, no. 2 (April 2005), pp. 73–87.

selected to join the SBY ticket precisely because he was a popular figure and a powerful Golkar leader. The 50-percent threshold created incentives for a ticket with two strong candidates, lest, in a fragmented field, a popular presidential candidate attract insufficient votes by himself to get the ticket to the runoff. In close contests, the majority threshold pushes presidential candidates harder than a plurality threshold would to find major figures for the second place on the ticket.[117] The vice president could be something other than was envisioned when presidential elections were originally discussed in Jakarta after Suharto: "a spare tire," whose only function was to succeed the president should the latter die or be removed.[118]

In important ways, then, the presidential electoral formula heightened tendencies already visible. It certainly weakened what were already only modest ties between many voters and their parties. The quasi-ascriptive party allegiances of the 1950s receded considerably. The formula helped weaken the ties of politicians to their parties and of particular parties to each other, as each sought advantage in lining up with promising presidential or vice presidential candidates of another party (and later with the victors). Some studies suggest that as the number of ideologically or ethnically based parties increases so does polarization,[119] but in Indonesia the growing number of parties was associated instead with more connections among them, and not particularly along predictable lines of cleavage.

In short, the MPR decision to opt for a separately elected president with a 50-percent-plus-one threshold had fundamental effects on cleavages, voter behavior, interparty relations, and presidential power. The profound character of these effects was unforeseen.

WINNERS AND LOSERS

From one angle, everyone won in Indonesia's constitutional process. Secular nationalists secured a provision entrenching the unitary state against amendment,[120] managed to retain their cherished *Pancasila*

[117] In 2009, however, a more confident SBY, running for reelection, chose a technocrat with no party base for the vice presidency.

[118] F.N. 2:30.

[119] See Jack Bielasiak, "The Institutionalization of Electoral and Party Systems in Postcommunist States," *Comparative Politics*, vol. 34, no. 2 (January 2002), pp. 189–210, at p. 202.

[120] Art. 37(5): "Provisions relating to the form of the unitary state of the Republic of Indonesia may not be amended."

preamble, and successfully fought off efforts to Islamicize the state. Everyone else was able to achieve what amounted to a new constitution, 89 percent of whose articles were either new or amended.[121] Appointed members were removed from the legislature, and in various ways the power of the Outer Islands in elections was enhanced to counterbalance that of Java. Victory in the constitutional process was widely shared.

From another perspective, there was some skewing. The secular character of the constitution was compromised somewhat by the provision requiring that education reinforce religious faith,[122] and both secularism and unitarism were challenged by the devolution to Aceh of the power to impose Islamic law as well as by the attempts of various regions and vigilantes in several areas to do the same. Once the armed forces were removed from the MPR, the absolute veto of secular nationalists over constitutional change was eliminated, and constitutional deals struck by PDI-P, particularly over the limited powers accorded the regional house of the legislature, were vulnerable to reversal over time. One of the unanticipated consequences of incremental amendment, as opposed to a wholly new constitution created all at once, is that it makes further incremental changes plausible.

Another reservation concerns the dissonance between what was accomplished in Jakarta and what was accomplished in the regions. Indonesia's improbable fundamental political reform was achieved with relatively little bloodshed.[123] For better and undoubtedly also for worse, it left experienced politicians in charge at the center. In the regions, however, it produced a scramble for power, replete with sporadic or, in a few locations, protracted violence, widened cleavages between dominant and aspiring ethnic and religious groups, and shortfalls in tolerance and governmental capacity.

STARTING BLUEPRINTS VERSUS INCREMENTAL DECISIONS

At the starting point of constitutional renovation in Indonesia, the turmoil outside and precarious legitimacy of those inside government made

[121] Indrayana, "Indonesian Constitutional Reform 1999–2002," p. 250.

[122] Art. 31(3).

[123] As I mentioned at the end of Chapter 2, there was considerable violence in various parts of the country, but it had little to do with the constitutional change process, and it was not comparable in scale or dispersion to the violence that followed the regime change of 1965–67.

proceeding by consensus imperative. Yet there was more disagreement than agreement on the direction of change. The process would have to move gradually as consensus developed. At or near the starting points in other constitutional processes, such as those in Northern Ireland and Fiji, those at the center of the process were in possession of a guiding theory – not necessarily an academically articulated theory, but nonetheless a coherent idea of a destination they wished to reach, whether that be the consociational regime designed for Northern Ireland or the incentive-based centripetalism a constitutional commission recommended for Fiji.[124] With a starting theory, one-shot constitution making becomes possible, even if some participants must be persuaded or are able to insist on compromises along the way, as they usually are when commission drafts are reviewed by other decision makers. The Indonesians had no such guiding conceptions at the outset. In spite of the dangers of bifurcation, so clearly manifested in the clashes of November 1998, theories neither of consociation nor of incentives to moderation figured much in Indonesian calculations.[125] Indonesian framers thought in terms of specific institutions. Although they had particular outcomes they wished to avoid and vague outcomes they wished to achieve, they did not see a single destination clearly at the beginning. The absence of a theory and the desire to proceed by consensus that had not yet developed were mutually reinforcing.

This mode of proceeding raises several questions about the nature of the final product in Indonesia: Can a coherent design emerge from a protracted, piecemeal process, with many players whose needs and interests must be satisfied? Will multiple compromises and multiple iterations create inapt designs consisting of parts acquired separately that do not fit together? Will the product be vulnerable to capricious sequencing, the chance order in which issues are confronted, with perverse entailments of earlier resolutions for later ones? Recall the starting burden of history, prominently displayed in multiple fears. When this burden combines with insider decision makers who are functioning within the very institutions that need to be changed and rejecting the imprecations of outsiders, will the process be limited to a tightly constricted set of choices? Will it yield

[124] For Northern Ireland, see John McGarry, ed., *Northern Ireland and the Divided World* (Oxford: Oxford University Press, 2001); for Fiji, see Paul Reeves et al., *The Fiji Islands, Towards a United Future: Report of the Fiji Constitution Review Commission*, Parliamentary Paper no. 34 of 1996 (Suva: Government Printer, 1996), pp. 304–30.

[125] For the two approaches, see Andrew Reynolds, ed., *The Architecture of Democracy* (Oxford: Oxford University Press, 2002).

reformed institutions that reflect the narrow range of what was possible once the first few steps had been taken in 1998 and 1999? Constitutions made in a hurry, against a background of turmoil, are often full of defects.[126] Does the Indonesian experience suggest that slower-moving processes of constitutional renovation have a complementary set of defects, born of the tyranny of earlier decisions over later ones? Or perhaps it does not matter, if the same institutions might have been produced even in a single-shot process in 1998–99. There is a basis in the Indonesian data on which to answer these questions.

The last-mentioned is easy to put aside. As I mentioned earlier, we can imagine the contours of a rapidly engineered one-shot constitution from two sources. The first is reflected in the swirl of ideas circulating among those who might have been appointed to a constitutional commission after Suharto fell. Those ideas were to negate everything distasteful about the New Order regime. To counter dictatorship, bicameralism, with a directly elected but closely controlled president, plurality elections to limit the power of party leaders and limit the number of parties, strong provisions for judicial review: these were the major themes of the time, and the watchword of the time was "checks and balances."[127] Something approaching the American model, but with a weaker president, would probably have prevailed with a commission of outsiders. An alternative vision, the first PAH I draft described in Chapter 4, would have made minimal changes to the 1945 constitution, retaining indirect election of the president and presidential accountability to (and removability by) the MPR and adding a prime minister and a second house. Even if a commission consisted of members who espoused both sets of ideas, the results would have been a weak president, many veto centers, and a considerable possibility of immobilism or legislative supremacy. There would have been an excellent chance that extensive changes to the 1945 document, and

[126] Jon Elster, "Forces and Mechanisms in the Constitution-making Process," *Duke Law Journal*, vol. 45, no. 2 (November 1995), pp. 364–95, at pp. 383–84; Jon Elster, Clause Offe, and Ulrich K. Preuss, *Institutional Design in Post-Communist Societies* (Cambridge: Cambridge University Press, 1998), pp. 107–08. The Iraqi constitution of 2005 was perhaps a paradigm example. So was the original 1945 Indonesian constitution.

[127] In August 1998, I attended a conference in Jakarta, "Toward Structural Reforms for Democratization in Indonesia," sponsored by LIPI, and in May 2000, I attended a conference at the University of Indonesia, "Seminar Nasional Amandemen UUD 1945" (National Seminar on Amendments to the 1945 constitution). These were the prevailing themes. The American model was on the minds of many speakers.

particularly direct election of the president, would be an issue that divided the MPR and that the proposals would not have secured the required two-thirds majority, especially without PDI-P and armed forces endorsement.[128]

[128] The MPR agreed in 2002 that a new constitutional commission would be appointed later to tidy things up and propose improvements. MPR Decree no. I/2002. It was not originally envisioned, however, that the commission would suggest major conceptual changes. All along, the MPR had resisted turning the constitutional process over to outsiders, although it had not been inattentive to outside proposals. The Nigerian system had been brought to its attention by CETRO, and other organizations, domestic and foreign, had been heard as well, on bicameralism and the presidential runoff, for example. See, e.g., Pusat Studi Hukum dan Kebijakan Indonesia (Indonesian Center for the Study of Law and Policy), "Perubahan Menuju Sistem Perwakilan Dua Kamar" (Changing Toward the System of Bicameral Representation), mimeographed paper, Jakarta, May 11, 2000; Andrew Ellis, "Second Round Presidential Elections: Options and Questions, A Note for PAH I Uji Sahih," NDI, Jakarta, May 16, 2002. Ironically, the more fundamentally the MPR changed the constitution, the louder was the clamor for a wholly new constitution, drafted by an independent commission, rather than "piecemeal changes that are often dictated by the short-term interests of political parties." *Jakarta Post*, December 31, 2001. In significant ways, the outsiders had already achieved their objectives – a directly elected president, a constitutional court, an end to an all-powerful MPR – but they could not believe the evidence of their own senses. After the Fourth Amendment had been enacted, civil society elites believed the session had been unproductive.

Although the demand for a constitutional commission long antedated her presidency, Megawati had mooted the idea of an independent commission in August 2001, after she had become president. Her party, however, was not keen, and so she dropped the notion. (She might originally have thought she could appoint most members of the commission and thus produce a constitution to her liking, perhaps one not very different from the 1945 constitution.) Yet the idea did not die. An array of civil society organizations and personalities, ranging from university alumni associations to certain leaders of the two largest Islamic bodies in the country, pursued it. See Gordon Crawford and Yulius P. Hermawan, "Whose Agenda? 'Partnership' and International Assistance to Democratization and Governance Reform in Indonesia," *Contemporary Southeast Asia*, vol. 24, no. 2 (August 2002), pp. 203–29. In 2002, a new Coalition for a New Constitution, consisting of CETRO and some legal aid, environmental, and women's organizations, as well as prominent human rights figures, emerged. The MPR's own commission idea was a way of insuring that the demand for an outside commission did not get in the way of passage of the Fourth Amendment, necessary for a timely presidential election in 2004. *Jakarta Post*, July 8, 2002. The commission's limited authority was a compromise between those in the MPR who had some sympathy for the commission idea and those who wanted none at all. Needless to say, the Coalition for a New Constitution was extremely disappointed with the MPR version.

After the commission was established, it seemed possible that its members would do more than merely smooth out the rough edges in the amendments that had been passed. See Etsi Yudhini, "Constitutional Questions Left to the Constitutional Commission: Some Thoughts of Possibilities and Options," NDI, Jakarta, November 21, 2003. Indeed, this forecast proved correct. The commission produced a lengthy study of the four amendments and proposed a Fifth Amendment to alter a number of previous changes, including those concerning eligibility to run for president and vice president

Indeed, the one thing that is completely clear is that a great many starting positions changed over time. Direct election of the president was a long shot. MPR members wanted to limit presidential power. Yet, in the end, they created a directly elected, powerful president. As late as MPR Decree III/2000, judicial review was to be reserved to the MPR. Plurality legislative elections had the edge over PR elections. Immediate abolition of armed forces seats was not considered possible. Serious devolution was in doubt, and so was bicameralism. The MPR was unlikely to yield its strong powers.[129] It would be the sheerest hindsight to underestimate the extent to which MPR members were willing to live with a set of internationally deviant institutions if they judged them suitable.[130] These included a three-house legislature (DPR, DPD, MPR), a mixed system of direct and indirect presidential election, with a role preserved for the MPR (either at the candidate selection stage or the runoff stage), and the unique constituency-favorite feature written into the 1999 electoral law. A single-shot process would certainly not have produced the same results as those that evolved over a period of years.

The long process of change was a key to its relative success. PDI-P and its armed forces allies could slow things down until they were persuaded, and this meant there would be no dramatic or violent reaction to changes that were agreed. The modest pro-incumbent bias of the final product was also a reason for the relatively smooth progress of the process of change.[131] Only the MPR could securely abolish its own monopoly position.

The long process had additional virtues. It allowed Golkar and PPP, originally tainted by their participation in the Suharto-dominated legislature, to transform themselves. In this way, it permitted those parties to cooperate with parties that had been outside the legislature or were newly

and procedures to amend the constitution. In May 2004, the commission wound up its work and submitted its draft amendments, but nothing came of its proposals. See Etsi Yudhini, "The Last Session of an All-Powerful People's Consultative Assembly (MPR), September 2004," NDI, Jakarta, September 2004; *Jakarta Post*, May 7, 2004.

[129] As of August 2000, there was unanimous interparty agreement, reported a PPP member of PAH I, that the MPR should be the highest state institution. F.N. 2:148. But doubts were just then beginning to be raised about this among PDI-P, PKB, and Golkar members. F.N. 2:153.

[130] Why adopt systems from other countries? asked a PDI-P member of PAH I in 2000. F.N. 2:49. There was cross-party skepticism of NGOs such as CETRO that were pushing unfamiliar foreign institutions. F.N. 2:144, 162–63.

[131] For a similar argument at an earlier stage, see Kathleen Woodward, "Negotiating a Mass-Driven Transition from Sultanism to Democracy: The Case of Indonesia," paper presented at a conference on Consolidating Indonesian Democracy, Ohio State University, May 11–12, 2001.

formed. Habits of legislative practice were established along the way and therefore were in place by the time a fully elected government took power under the new dispensation. The passage of years also meant there was time for rethinking provisions previously enacted and for puzzling out the implications of the partial agreements reached at earlier stages.

Many of the constitutional destinations that were reached were the result of the road decision makers had placed themselves on earlier, taken together with their preconceptions about destinations they wished to avoid. Yet this was a case of only partial path dependence. Indonesia could easily have ended up with a weaker devolution, a better fit between devolved institutions and requirements to register parties, a stronger DPD, different electoral formulae for the president, the DPR, and the DPD, and other specific choices. Political skills also had a part to play, especially in the recurrent victories of Golkar in the MPR and the recurrent defeats of conservatives within PDI-P. Political skill is no part of path dependence.

There were stages of reform. At first, Habibie's government seized control of the process, without much competition. After the 1999 election, MPR politicians recognized that reform was their job, but they were slow to make decisions that could be irrevocable. They exchanged views and listened to the views of outsiders, including NGOs. By 2000, they focused intently on the job without much staff and without much tolerance for outside interference. The stages of reform were cross-cut by waves of enthusiasm: for and against plurality legislative elections, direct election of the president, sovereign powers for the MPR, and so on. Small wonder that things could end up far from where they began.

INCREMENTALISM AND COHERENCE

In principle, a planning process permits each part of a design to be assessed against every other part, so that, in a good plan, the parts are not in conflict. On the other hand, a design created in multiple iterations risks internal inconsistency, as the equilibrium at any given time may be completely different from that at another time. Indonesians themselves worried about this problem: "One article cannot be amended while another article is 'still under discussion.'"[132] In practice, however, coherent plans are vulnerable to compromises in the adoption process that introduce inconsistent elements. Hybrid constitutions, with parts that work against each

[132] *Tempo* (Jakarta), October 30–November 5, 2001.

other, are common, even when they emerge from careful plans.[133] By contrast, incremental decisions accumulating over a protracted period open the possibility of returning to matters resolved earlier in order to iron out discrepancies with later resolutions. It is just not clear on which side the net advantage lies.

Most of the problems of incoherent combinations of institutions were not foreseen in Indonesia. Some, such as the constituency-winner system in 1999 or a configuration of decentralized governmental institutions based on analogies of local legislative supremacy to the then-prevailing MPR supremacy, were, as we have seen, corrected with the adoption of a new electoral system and the alteration of central government institutions away from MPR supremacy. (Once it was agreed to have direct presidential elections, it seemed odd not to elect governors, district heads, and mayors directly.) Other anomalies were not corrected. A radical devolution but a very weak regional house; a DPD that represents provinces but devolution to units below the provincial level; an electoral system for the DPD that is unlikely to produce representatives with broad provincial accountability; a DPR elected by party-list PR but a DPD elected by nonpartisan SNTV; and, perhaps above all, requirements that parties have national support and that regional legislatures and executives be nominated exclusively by national political parties,[134] in conflict with the aim of devolution to maximize regional autonomy – all of these are likely to produce conflict between the center and the regions and within provinces. Interestingly, all derive from the same source: the fear of territorial disintegration.

Whether these particular problems would have come out differently had a full constitutional plan been presented to the MPR by a single drafting body at one time is uncertain, but it seems doubtful. The vast majority of MPR members in 1999 – by some estimates, 70 percent – were residents of Jakarta. They had a common view of Indonesia's vulnerability to separatism. This view would likely have been shared by any body entrusted with the task of preparing a constitutional draft in a single iteration.

The main coherence issue for Indonesian decision makers centered on various combinations of presidential and legislative institutions and elections. On the one hand, it was feared, a DPR and a president, if each were

[133] See, e.g., Yash Ghai, "The Implementation of the Fiji Islands Constitution," in A. Haroon Akram-Lodhi, ed., *Confronting Fiji Futures* (Canberra: Asia Pacific Press, 2000), pp. 21–49, criticizing insertion of a consociational provision at odds with the centripetal character of the overall plan in Fiji.

[134] Law no. 32 of 2004 Concerning Regional Administration, art. 59; Law no. 12 of 2003 Concerning Elections of DPR, DPD, and DPRD Members, arts. 60–70.

elected by a plurality system, could produce an artificial legislative majority for one party and perhaps a 30-percent or so plurality president of the same party, who might act together in conflict-producing, winner-take-all ways. On the other hand, a weak, possibly indirectly elected president and a fragmented legislature, especially with two powerful chambers, could lead to nearly permanent deadlock.[135] Alternatively, the classic Latin American combination of a plurality president and a PR legislature was also feared for its propensity to deny the president a legislative majority or to precipitate conflict between the branches.[136] Some such concerns led the MPR to decide on a majority threshold for president and various measures to reduce party fragmentation, as we have seen, but did not dissuade it from PR legislative elections.

The Indonesian configuration, however, may be producing something quite different from standard political science expectations of such a combination of institutions, something perhaps more benign for governmental stability and ethnic and religious conflict. As we have observed, the 50-percent threshold for victory in presidential elections, superimposed on multiple political parties that had been cooperating across party and group lines for five years, led to candidate combinations in 2004 that crisscrossed the parties and reduced the solidity of allegiances to parties. The 50-percent threshold virtually required a search for running mates across party lines. The norms of consensus and respect for the views of all party fractions in the legislature that had characterized the process of constitutional change had made party lines less firm than they might have been had majoritarian traditions set in early. Ambitions to be elected president or vice president even led particular individuals (such as Jusuf Kalla) to defy their party's endorsed ticket to join another, further weakening party lines. And, as it happened, all this coincided with further party fluidity and proliferation resulting from the growing unpopularity of one party leader (Megawati) and the popularity of another (SBY), who formed a new party.

These specific developments were unintended, although they were implied by the possibility that a coalition of parties could nominate a single presidential–vice presidential ticket. The way in which actors responded to

[135] Both problems were cited by Andrew Ellis, "Amending the 1945 Constitution," paper presented at the Seminar Nasional, Amandemen UUD 1945 (National Seminar, Amending the 1945 Constitution), University of Indonesia, May 10–11, 2000.

[136] Interview with a member of the Team of Seven. F.N. 2:156. The *locus classicus* for this apprehension is Scott Mainwaring, "Presidentialism, Multipartism, and Democracy: The Difficult Combination," *Comparative Political Studies*, vol. 26, no. 2 (July 1993), pp. 198–228.

the incentives in the rules stood to mitigate conflicts between the two branches and especially to mitigate conflicts that could be seen to fall along ethnic or religious lines. Cross-cutting presidential–vice presidential tickets are an obvious source of conflict mitigation. Party proliferation is another, because interparty competition for support within each stream or voting bloc makes action as a bloc against another bloc more difficult. This should remain true even after proceeding by consensus in the DPR is abandoned. There might be less agreement among parties in the same stream, but no diminution of cooperation across streams. The willingness of parties to coalesce and then to change sides with alacrity when it is advantageous to do so also means that the secular-Muslim cleavage is far from unbridgeable.[137] The legacy of consensus politics, intrasegmental party competition, and the new opportunities provided by presidentialism work together to dampen polarization.

To this forecast of cooperation, there is one major exception. The designers of the 50-percent threshold for presidential election thought of it as benign, because it would bring majoritarian legitimacy to the office. The only difficulty they had to surmount was the need for a second round, which they reluctantly accepted. The 50-percent threshold, however, has a problem they did not foresee. In a fragmented party system, as we have seen, the need to arrive at 50 percent induces presidential candidates to seek politically strong running mates from other parties. Relations between independently powerful presidents and vice presidents are not likely to be consistently harmonious. There are, no doubt, offsetting factors. The desire of vice presidents to keep a winning coalition intact, in order to support their own ambitions later, should limit conflict. And the need for a legislative majority would, in any case, have provided a vice president with some power independent of the president. But the combination of 50 percent and considerable party fragmentation makes it harder for the executive to speak with one voice. Paradoxically, the majoritarian threshold might sometimes reproduce party division in the executive.

If this overall forecast, or something close to it, proves correct over the long term, then the design of institutions at the center may be judged to be at least relatively coherent. As I have suggested, the design of institutions connecting the center and the regions – the vertical design – embodies several incoherent features. Very likely, those features will be conducive to fraught relations between the center and particular regions. But the larger dangers – of bifurcation, of conflict between Muslims and secular

[137] For a similar judgment, see Liddle and Mujani, "Leadership, Party and Religion," p. 844.

nationalists, of deep resentment of Javanese by an array of Outer Islanders – seem likely to be abated by the horizontal configuration of central government institutions chosen against the background of years of cooperation.

To be sure, this configuration builds on an endowment feature of Indonesia's social and political landscape: preexisting multipolarity. Yet poles can become more firm and less fluid, or they can congeal into two or three antagonistic blocs. Institutions can foster movement toward multipolarity or bipolarity – witness the emergence of north-south antipathies in many African countries after independence – and toward fluidity or rigidity. The goal of constitutional engineering is not to transform such conflicts dramatically – constitutions can rarely do that – but to soften them, to render them more tractable, to build on any preexisting malleability and permeability of group allegiances. Early in Indonesia's democratic experiment, it seemed as if constitutional designers might have produced a formula to reinforce something they did not set out to reinforce: fragmentation at the center, but fragmentation without sharp polarization. There are much worse fates for divided societies.

6

The Shape of the New System

Following the 2004 national elections and the provincial and regional elections held from 2005 to 2008, the shape of the new political system became fairly clear. It was modified somewhat by legislation put in place for subsequent elections but, for the most part, not in fundamental ways, although some electoral-law changes enacted in 2012 could have a significant impact.[1] The contours of the system can be appraised by examining the presidency, the role of parties in the national legislature, their role in regional elections and regional legislatures, the allegiances of voters, and the evolving party configuration in national elections.

The presidency became a strong office, which all the large parties aspired to occupy, but it was not a wholly unified office. We have observed that the need for a coalition ticket crossing lines between ethnic and religious streams made the vice president a potential rival to the president. This became a millstone that Yudhoyono, the incumbent president, was able to cast off in 2009.

Within the DPR, we have also noted, the president, as head of a weak party from 2004 to 2009, was dependent for legislative support on other parties, most notably Golkar, the party of his vice president. But the legislature continued to hover somewhere between a model of entirely fluid coalitions, on the one hand, and government and opposition, on the other, but certainly closer to the former.

Regional elections produced relatively few single-party majorities in regional legislatures. The need for interparty cooperation at the regional level provided considerable support for the general fluidity of the party

[1] These are discussed later in this chapter.

system and a disinclination to harden lines between allies and opponents. National and regional electorates also showed themselves to be flexible in party allegiances, within limits. Although most voters stayed within their cultural stream in legislative elections, there was lively competition for their support. Voters were quite willing to cross streams in choosing among presidential candidates.

Party fragmentation continued to have great benefits in abetting the fluidity I have described and averting hard-and-fast political cum ethnic and religious lines that could prove dangerous to Indonesia's democracy. Nevertheless, the political elite exhibited an ongoing fear of this benign fragmentation. The laws enacted for the 2009 and 2014 elections were intended again to reduce fragmentation.

With the exception of the presidency, which may have undergone some change after 2009, all of these characteristics were in place after the elections of that year. Indeed, it is notable that politics in the regions after the regional elections of 2005–08 strongly reinforced the multipolar fluidity that has been emerging at the center prior to that time. This was a very important development.

THE EMERGING PRESIDENCY

Yudhoyono proved to be a very popular president in his first term. This had several significant effects.

SBY's personal popularity accrued to his party, which grew from its minor standing in 2004 to its plurality status, far ahead of all other parties, in the legislative elections of 2009. Following his 2004 victory, SBY had created a so-called rainbow coalition cabinet, necessary because his own party held only 10 percent of the seats in the DPR. Members of his own party comprised only a small minority of the cabinet, which also had a large number of ministers unaffiliated with any party and chosen because of their putative expertise. Slowly, SBY attracted all major parties except PDI-P into the cabinet. The attraction was not due merely to personal popularity, of course, but to the resources that could be extracted from various ministries. Megawati's refusal to join caused a breach in her own party, but she held her own and adhered to her opposition in the DPR.

Positions taken by a popular president attracted support in the DPR on legislation and appointments. Support was not at all uniform. Sometimes parties represented in the cabinet did not give full backing to government initiatives in the legislature. Even Golkar, formally aligned with the government and generally voting with it, voted against candidates proposed for

governor of the national bank, and it initially opposed SBY's attempt to create a presidential advisory unit in 2006, although the party eventually reversed course on that issue. Amien Rais' PAN had two cabinet members and was officially neutral – neither pro-government nor opposition – but in close cases its votes were available to the government. More or less the same was true for PPP, PKB, and PKS.

A revealing episode concerned a proposed legislative inquiry into a controversial decision to import rice from Vietnam in 2006. DPR members from PDI-P, PAN, PKB, and PKS favored the inquiry, on grounds that imported rice might threaten Indonesian farmers, but in the end only the PKS and PDI-P *fraksi* supported the investigation unanimously. Most legislators opposed it, and the investigation proposal was defeated.[2] The pull of presidential power was strong. As a last resort, SBY had the ability to reshuffle cabinets. For a medium-sized party such as PAN, losing its two ministers would be painful. Other parties faced the same predicament. While SBY's popularity fluctuated during his first term, most of the time it and the patronage commanded by the executive were adequate to make legislators think twice about opposing him. Only PDI-P, which had declared its role as an opposition party early on, was consistent in refusing cabinet seats. So strong was Yudhoyono's influence with other parties that the PDI-P faction head in the DPR was moved to complain about a pro-government bias in that body.[3]

The neutrality of most parties in the legislature followed the long period before 2004 in which government and opposition were not clearly demarcated. SBY's popularity fostered continuation of that tradition, impeding creation of a solid opposition front and reinforcing yet again the fluidity of interparty relationships. Consensus decision making now yielded to voting in the DPR, but not to very clear alignments.

Most attempts to form interparty coalitions in the legislature either failed or proved ephemeral. As we saw in Chapter 5, the Golkar-PDIP coalition formed after the 2004 elections quickly fell apart once Vice President Kalla was elected chairman of Golkar, after which he brought Golkar into a governing arrangement with SBY's Democratic Party. Even that coalition, however, was less than solid. It was challenged not merely by Golkar defections on individual bills but by a more basic structural problem deriving from regional elections. Because of decentralization, it would be very difficult for the governing partners to make across-the-board

[2] *Jakarta Post*, January 25, 2006; January 26, 2006.
[3] Ibid., January 12, 2006.

no-contest agreements at the regional level, where local politicians have independent bases of support and aspire to particular offices. In 2008, Golkar lost several regional elections. In North Maluku, for example, Democratic Party candidates defeated Golkar candidates for governor and deputy governor, causing frustration within Golkar.[4] Even as Golkar was aligned with SBY's Democrats at the center, Golkar and PDI-P leaders met periodically with a view to forming a coalition for the 2009 elections. In the end, however, they put up two separate presidential tickets.

In 2007, eight parties, mainly Muslim parties, formed an alliance to attempt to deal on more equal terms with what were then the two largest parties in the DPR, Golkar and PDI-P. This, too, produced little in the way of voting alignments, unless one counts a draconian antipornography bill to be discussed later.

The presidency, with its majority mandate, was a strong office, but it was frequently tested by DPR politicians who attempted to make the executive accountable to it.[5] SBY began to think of ways to strengthen the office further. We have already seen this with respect to his openness to a Fifth Amendment sought by DPD leaders, but bitterly opposed in the DPR, to enhance the power of the regional house, at which point he made known his desire to include in that proposed amendment a presidential veto power resembling that of the American president.[6] Another proposal was to create a new advisory team in the president's office. That team was to have a wide-ranging mandate, cutting across the work of many ministries. The new unit was said by some to be modeled on the Executive Office of the American president. When this body was proposed in 2006, the vice president had not been consulted about it. Jusuf Kalla was critical of it,

[4] Ibid., June 7, 2008.

[5] There were periodic demands in the DPR for the president to appear before it to explain this or that policy failure. These demands were redolent of the former practice of accountability speeches and debates, and they were resisted.

[6] The drive to gain legislative powers for the DPD equal to those of the DPR was recurrent. In 2008, the DPD had floated a draft constitutional amendment to that effect, but it was rejected by the DPR. In 2010, however, it adopted a different strategy, incorporating a range of other changes in a proposed Fifth Amendment – most of them strengthening civil liberties and institutions such as the Constitutional Court, the election commission, and the KPK – that might attract additional support for the draft. Several parties indicated their support for the bill, but some feared that the draft might be amended to allow SBY to run for a third term. *Jakarta Globe*, December 2, 2010; January 29, 2011; February 1, 2011; February 7, 2011. Subsequently, a proposal reemerged among a group of DPD members to strengthen the powers of the DPD and give the president a veto. *Jakarta Post*, April 18, 2011.

the more so as the first head of the unit was to be a former minister in Gus Dur's government who had once suggested that Kalla's party, Golkar, a creature of Suharto's New Order, be dissolved. Golkar actually threatened to join the opposition over this issue, but within a matter of weeks the president had his way.

The importance of such an advisory body derived from SBY's need to accept a large, multiparty cabinet, given the weakness of his own party in the DPR. Coordinating such a body was not easy; some ministers did not give the president's initiatives their full support. Despite cabinet reshuffles in 2005 and 2007, SBY was, of course, well aware of the harsh reaction Gus Dur had received when he sought to free himself from ministers who owed their initial appointments to the MPR more than they did to him. Although he also appointed several technocrats to the cabinet, especially his third reshuffled cabinet, Yudhoyono sought to augment his own office by creating the new unit.

One might speculate that SBY's difficulties with a multiparty cabinet derived from the allegedly infelicitous combination of a presidential system and a PR legislature. In fact, however, SBY's problems would have been more difficult if the DPR had been elected by first-past-the-post. In that case, two strong parties (PDI-P and Golkar), neither of them SBY's party, would have dominated that DPR, and the possibility of stalemate would have been serious.

SBY's problem was, rather, that his party, PD, was a new entrant in the 2004 legislative elections, which took place months before the presidential election. For this reason, his electoral popularity was yet to be proven, and the best his party could do in 2004 was to gain a small fraction of DPR seats. In 2009, however, the PD was able to more than double its representation in the DPR and become the largest party. The cabinet the president chose could, therefore, be somewhat narrower in party representation and somewhat more slanted toward the PD, but SBY still chose a multiparty cabinet in which PD ministers comprised only about a third of those with party identifications. It was an oversized cabinet, with ministers from parties holding 75 percent of the seats in the DPR. Had Megawati not persisted in keeping PDI-P outside the executive, the cabinet would have had ministers from every major party. Even the PDI-P declared that it would not really play a firm opposition role but would be a "strategic partner" to government. As we shall see later, the opposition could be pro-government, while coalition partners could oppose the president's position, as they sometimes did in both his first and second terms.

Despite the majority requirement for presidential election, SBY was able to risk taking a politically weak vice presidential candidate on his ticket in 2009. Yudhoyono's choice was former central bank governor Boediono, a former university lecturer without an independent political base. Jusuf Kalla had actually played into SBY's hands by hinting and finally declaring that he wished to run for president himself. A year before the 2009 elections, Kalla had toured the country while SBY was on a foreign trip. Kalla had dispensed largess and made vivid displays of his decisiveness, in implicit contrast to SBY's more cautious, reflective style. The following month, the two went on competing pre-campaign trips while still being obliged to cooperate in office – obviously, a galling state of affairs for SBY. With a new vice president, SBY clearly aimed to break free of the rivalry within the presidential office that had constrained him for five years. Whether a less popular future presidential candidate could take the same risk and still secure a majority of the presidential vote is uncertain. So the problem of a troublesome vice president can recur, especially if the vice president comes from a strong party, as Kalla did, and even more if that party were to join an opposition grouping in the DPR, as Golkar periodically threatened to do.

In spite of these doubts about just how independently powerful the presidency will ultimately be, it is already clear that separate election of the president has had a profound effect on the political system. From 2004 on, SBY's dependence on Golkar and some Islamic parties certainly slowed down some of the president's more ambitious reform projects for the bureaucracy and the judiciary. Nevertheless, the pull of the president's mandate was sufficient to allow him to accomplish at least parts of his legislative agenda and to prosecute some serious corruption and terrorism cases. More importantly, SBY was able to leverage his popular appeal to a significant electoral victory for his party in the DPR in the 2009 elections. If, in SBY's second term, the office seemed weaker than it had in his first, that was principally because he often seemed to play the role of chairman of a committee, rather than bold innovator. In addition, the president was wounded by exposure of scandals involving his party. Under other conditions, the attributes of the office would be sufficient to revive a strong presidency.

THE NEW REGIONAL SYSTEM

In 2004, a new law on regional governments required the popular election of local government executives – *bupatis* in districts, *wali kotas* or mayors

in cities, and their deputies in both cases.[7] Following the first devolution law in 1999, these offices were filled by indirect election by the local council or DPRD, which itself was directly elected.[8] Under this regime, the *bupati* or mayor was sometimes in conflict with the council that had chosen him and, at least occasionally, with the speaker of that local legislature, who felt he had a more direct popular mandate.[9] Once the president of the republic was to be directly elected, however, it was clear that executives at lower levels should also derive their authority directly from the voters.

With the exception of Aceh, where local parties were permitted to contest elections up to the provincial level,[10] we have seen that regional and provincial elections were to be contested by candidates nominated by national parties. Because of the 2004 law, a series of elections for *bupatis* and *wali kotas* (hereinafter collectively referred to as district heads or regional executives) was conducted between 2005 and 2008 all over the country. The results of these elections, called *pilkada*,[11] reinforced many of the tendencies in party politics and group relations that were visible at the national level. Using an invaluable volume of case studies of these elections,[12] as well as results from other regions, it is worthwhile extrapolating some of the major patterns.

In order to nominate a candidate for district head, a party or coalition of parties had to have gained 15 percent of either the seats or the votes in the previous local council elections.[13] DPRD elections are conducted by list-system proportional representation, which means that many councils are fragmented. In the first wave of devolution, only about 10 percent of all such councils had single-party legislative majorities,[14] and some did not even have strong party pluralities. Blora, in Central Java, was a PDI-P

[7] Law no. 32 of 2004 on Regional Government, art. 59.

[8] Law no. 22 of 1999 on Regional Government, art. 34.

[9] See, e.g., Amrih Widodo, "Changing the Cultural Landscape of Local Politics in Post-Authoritarian Indonesia: The View from Blora, Central Java," in Edward Aspinall and Greg Fealy, eds., *Local Power and Politics in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2003), pp. 179–93, at pp. 188–89.

[10] Law no. 11 of 2006 on the Governance of Aceh, art. 65.

[11] An acronym for *pemilihan kepala daerah langsung*, or direct election of regional heads.

[12] Maribeth Erb and Priyambudi Sulistiyanto, eds., *Deepening Democracy in Indonesia? Direct Elections for Local Leaders (Pilkada)* (Singapore: Institute of Southeast Asian Studies, 2009).

[13] Law no. 32 of 2004, art. 59(2). As we shall see, this criterion was subsequently amended to 20 percent.

[14] M. Ryaas Rasyid, "Regional Autonomy and Local Politics in Indonesia," in Aspinall and Fealy, eds., *Local Power and Politics in Indonesia*, pp. 63–71, at p. 65.

stronghold, a site of student demonstrations and PDI-P-led rallies and student demonstrations in 1998. Yet, in the first district elections, PDI-P gained only 19 of 40 seats.[15] The largest party could not secure a majority.

The same pattern prevailed even at the provincial level. South Sulawesi, a Golkar stronghold, the home region of Jusuf Kalla, had a Golkar plurality of only 48.5 percent of the seats as of 2009. More typical were splits in which the largest party, usually Golkar or PDI-P, held 25 or 30 percent of the seats, while other parties were in the single or low double digits. Coalition politics became imperative under these conditions. Only about a third of provincial governorships were won by single-party slates, most by PDI-P or Golkar. Everywhere else, coalition tickets were the winners.

A district or city might be more homogeneous than a province in ethnic, religious, or party allegiances, but even so party fragmentation was the rule at the local council level. Consequently, when regional executive elections were held, parties were quite unsure of their prospects of winning. In 2005, some 40 percent of incumbents lost their bids for reelection. Most candidates, incumbent or not, needed to find a suitable multiparty base of support. Elections for district head and deputy head, running on a common ticket, were governed by a plurality standard for victory, rather than the majority standard applicable to presidential elections, provided that the plurality reached a threshold of 25 percent of the vote. If not, there would be a runoff of the top two tickets.[16]

The proliferation of candidates who could muster 15-percent support for nomination, combined with the instability of the party allegiances of voters, induced many candidates to adopt two strategies to widen their electoral base. The first was to seek multiparty sponsorship, because even the support of the largest party might well be insufficient to propel a district head candidate to a plurality. In the first 176 district-head elections held in 2005, only 63 of the winners were candidates nominated by a single party.[17] By 2008, when three quarters of these elections had been held, only 29 percent had been won by candidates without coalition sponsorship.[18] The second strategy, related to the first, was to choose a

[15] Widodo, "Changing the Cultural Landscape of Local Politics in Post-Authoritarian Indonesia," p. 185.

[16] Law no. 32 of 2004 on Regional Government, art. 107. This threshold was later revised to 30 percent.

[17] Pratikno, "Political Parties in *Pilkada*: Some Problems for Democratic Consolidation," in Erb and Sulistiyanto, eds., *Deepening Democracy in Indonesia?*, pp. 53–73, at pp. 61–62.

[18] Saiful Mujani and R. William Liddle, "Muslim Indonesia's Secular Democracy," *Asian Survey*, vol. 49, no. 4 (July–August 2009), pp. 575–90, at p. 583.

candidate for deputy district head from another party, often also from another cultural stream. In addition to broadening support, both of these strategies might operate to discourage competing candidates and so to limit the field, but in practice the plurality of parties and the weakness of local party loyalties usually produced several competing tickets anyway.

The first imperative of most candidates was to secure the endorsement of a national party. The enhanced powers and budgets of regional governments after devolution made them important sources of patronage. As a result, businesspeople were especially attracted to the regional executive position. Because of the resources associated with that office, parties demanded significant payments to secure nominations. Whereas, previously, aspiring candidates had to pay local assembly members for their votes,[19] now payments went to the parties. Sometimes it was reported that parties took competing bids from people eager to run, and there was tension between national parties and their local branches, which sought more autonomy in candidate selection.[20] Given the 15-percent requirement to run, party endorsement was indispensable even for the most popular candidates; and, of course, securing the favor of the party at the center might require propitiating its key officials.

Campaigns, too, were exceedingly expensive to run. In some of South Sulawesi's district-head elections, for example, it was claimed that each candidate spent in the hundreds of thousands of dollars (U.S.) for the campaign.[21] Needless to say, these were expenditures successful candidates would anticipate recouping during a term of office.

Funds alone do not assure electoral success. Like the presidency, the office of district head is singular and personal. This makes party loyalty less significant with voters than it might otherwise be, and there are cases of popular candidates defeating less popular ones sponsored by larger parties.

[19] See Nankyung Choi, "Batam's 2006 Mayoral Election: Weakened Political Parties and Intensified Power Struggle in Local Indonesia," in Erb and Sulistiyanto, eds., *Deepening Democracy in Indonesia*?, pp. 74–100, at pp. 74–75. Choi's earlier article, "Local Elections and Party Politics in Post-*Reformasi* Indonesia: A View from Yogyakarta," *Contemporary Southeast Asia*, vol. **26**, no. 2 (August 2004), pp. 280–301, contains an excellent depiction of relations among central party officials, local party officials, local council members, and aspiring candidates.

[20] Choi, "Batam's 2006 Mayoral Election," p. 82.

[21] Michael Buehler, "The Rising Importance of Personal Networks in Indonesian Local Politics: An Analysis of District Government Head Elections in South Sulawesi in 2005," in Erb and Sulistiyanto, eds., *Deepening Democracy in Indonesia*?, pp. 101–24, at p. 106. A campaign team needs to be assembled, and influential local functionaries often need to be paid to mention the candidates' names in a favorable way as they travel the district.

Overall, Golkar and PDI-P did best in the *pilkada*, but neither remotely approached 50-percent success, even in coalition with others.[22] Moreover, results in particular regions were often very much at variance with the overall pattern. Multiparty contests could be decided by small vote differentials, so parties had to be nimble in coalition decisions as well as in candidate choice.

Local party affiliations could be powerfully important, overshadowing strong national parties. Central Sulawesi was a region badly affected by Christian-Muslim killing until 2001; intergroup tensions remained thereafter. In 2005, there were five slates for district head and deputy head in Poso, the worst affected area of the province.[23] All five slates were interreligious, three with a Christian at the top of the ticket, two with a Muslim. The winning slate ran on the ticket of a Christian party with a very small national following. It won convincingly, with 42.6 percent of the vote. The next highest slate won less than half of that share, and it was the ticket of a small offshoot of Golkar. Golkar's own slate received only 13.3 percent of the vote, and a ticket put together by PDI-P, Yudhoyono's PD, and a smaller party came in last with only 10.3 percent of the vote. Group affiliations, personal popularity, and local issues trumped national party loyalties.

In seemingly bipolar districts, the support of particular ethnic groups was sometimes lined up behind one national party, whereupon its opponents would cleave to an opposing national party. But this did not necessarily guarantee success if subethnic divisions were important or if particular candidates were unusually appealing. In West Kalimantan, a conflicted province, non-Muslim Dayaks tended to align with PDI-P, Muslim Malays with Golkar.[24] Even so, of six regional-head contests, Golkar won only two; PDI-P, one. Only one of the six *bupatis* was elected on more than 50 percent of the vote, and four were elected on pluralities of less than 40 percent, two as low as 25 and 28 percent. None of the six races had only two candidates; four had five or six candidates; and one of the contests was decided by one percent of the vote.

[22] Official aggregate figures do not exist. According to the *Jakarta Post*, January 14, 2008, PDI-P (with or without coalition partners) won 35.7 percent of provincial and regional elections in 2007, while Golkar won 28.5 percent. PKS and PKB were tied for third place with 14.3 percent each, whereas PPP and PAN appear to have done better in 2005–06.

[23] Graham Brown and Rachel Diprose, "Bare-Chested Politics in Central Sulawesi: The Dynamics of Local Elections in a Post-Conflict Region," in Erb and Sulistiyanto, eds., *Deepening Democracy in Indonesia?*, pp. 352–73.

[24] Benny Subianto, "Ethnic Politics and the Rise of Dayak Bureaucrats in Local Elections," in ibid., pp. 327–51.

Despite the plurality of candidates in many elections, a large number of candidates were sponsored by multiple parties – and not only by small parties seeking to cross the 15-percent threshold for candidate eligibility. For example, in Ternate, in North Maluku, where Golkar was strong and a three-way race for mayor was decided in its favor with a 52.8 percent majority, Golkar's candidate was also endorsed by two other parties.[25] In one South Sulawesi district, the winning candidates in a three-way race were endorsed by Golkar, PAN, and PKS.[26] The losers were nominated in one case by a coalition of small parties with PDI-P and in another by the PPP, which actually nominated a Golkar man, thereby splitting PPP support for the ticket. A four-way race in an adjacent district featured a contest among winning candidates supported by PAN, PD, and three small parties against Golkar candidates, candidates of PKS and PDI-P and those of PKB, PPP, and nine small parties. It is notable that coalitions were not strictly along lines of cultural affinity – witness the ties between PAN and PD and between PKS and PDI-P – and equally significant that the winning pair had connections in Golkar, the party that did not formally support their candidacy, while the local PDI-P failed to support its own nominees. Party alliances were flexible, and party lines were permeable.

Contests, of course, ran the gamut. In some, a winning combination was obvious. This was the case of Kebumen district in Central Java, where a PDI-P candidate could pull in the *abangan* vote and an NU-affiliated running mate could gain the allegiance of *santri* voters to produce an overwhelming victory.[27] The same was true, with a comparable combination, this time PDI-P and Muhammadiyah, and with a comparably lopsided result, in Bantul, in Jogjakarta.[28] At the other extreme was Batam, where 13 parties held between one and seven seats in a local legislature of 45, and only one could reach the 15 percent threshold alone.[29] There coalitions were indispensable, and most crossed cleavage lines, eventually producing a victory of the ticket endorsed by Golkar, PKS, PPP, and a smaller party.

[25] Claire Q. Smith, "The Return of the Sultan? Power, Patronage, and Political Machines in 'Post'-Conflict North Maluku," in ibid., pp. 303–26.

[26] Buehler, "The Rising Importance of Personal Networks in Indonesian Local Politics," pp. 104–14.

[27] Tri Ratnawati, "Gender and Reform in Indonesian Politics: The Case of a Javanese Woman Bupati," in Erb and Sulistiyanto, eds., *Deepening Democracy in Indonesia?*, pp. 174–89.

[28] Priyambudi Sulistiyanto, "*Pilkada* in Bantul District: Incumbent Populism and the Decline of Royal Power," in ibid., pp. 190–208.

[29] Choi, "Batam's 2006 Mayoral Election," pp. 80, 88–89.

Fragmentation of support also played out in a district of Flores, a mainly Catholic island, on which kin groups began to support different parties.[30] Although this was a natural stronghold for PDI-P, no candidate managed to secure all the necessary party approvals, so PDI-P ran no candidate. Golkar ran a slate, as did two separate coalitions of small parties and a coalition of PKB, PD, PAN, and some small parties, the last of which eventually won.

As Flores exhibited fission along kinship lines, Jepara district in Central Java displayed party differences within the same cultural stream, traditionalist Islam.[31] In this NU area, there was keen competition between PKB and PPP, but PPP put together the larger, winning coalition, which included Golkar, PD, PAN, and others. The elections brought out or heightened local divisions, which made coalitions necessary.

Those coalitions were almost everywhere across cleavage lines, whether those were Muslim-Christian, *santri-abangan*, indigene-migrant, or (in Papua) coastal-interior.[32] Parties opposing each other in one district lined up together in another. In ethnically or religiously divided districts, mixed tickets were the rule. Campaigns tended to be personalistic. Candidates needed a combination of money, popularity, and a record that inspired confidence in their ability to deliver patronage or, in areas affected by violence, personal security. These contests mimicked the attributes of presidential elections, and it was probably helpful that the regional elections had been preceded by the presidential election of 2004.

In this environment, party disloyalty was possible. Voters could cross party lines to vote for an attractive candidate, just as they did in presidential elections. Local Golkar functionaries could (and did) join the campaigns of candidates not endorsed by their party. PDI-P cadres could (and did) decline to support PDI-P candidates who had been nominated because of pressure from the provincial governor. Interference in candidate selection from higher levels, often irresistible because of financial inducements, could prove to be self-defeating.

In some measure, the anomalous requirement that regional elections be held under national party labels was circumvented by personalistic

[30] Maribeth Erb and Wilhelmus Anggal, "Conflict and the Growth of Democracy in Manggarai District," in Erb and Sulistiyanto, eds., *Deepening Democracy in Indonesia?*, pp. 283–302.

[31] Jim Schiller, "Electing District Heads in Indonesia: Democratic Deepening or Elite Enrichment?" in ibid., pp. 147–73.

[32] Marcus Mietzner, "Autonomy, Democracy, and Internal Conflict: The 2006 Gubernatorial Elections in Papua," in ibid., pp. 259–82.

politics, line crossing by voters and party workers, and the power of parties that were strong locally because of their identification with local ethnic groups and causes, even though they might be weak nationally. For the rest, the requirement of national party labels served as a mechanism of party rent seeking at the center and in provincial capitals.

The uncertainty provoked by and reflected in the growth of coalitions formed to win regional elections made for a decidedly local politics. Even had competing coalitions taken root at the central government level, they could not have been transmitted downward to the regions. The heterogeneity of regional political conditions would have made some such coalitions electorally dysfunctional in many regions. And, reciprocally, once the need for flexibility in coalition formation had been demonstrated in the regions, as it was decisively between 2005 and 2008, forming firm coalitions at the center became that much more difficult as well. The local pattern of multipolar fluidity could only reinforce the same pattern that had emerged at the national level.

The importance of financial resources for candidates gave businesspeople a decided advantage over retired military officers, who had been Suharto's favorite candidates for regional executive positions but who now lost badly all over the country.[33] The need for intergroup support meant that even coalitions of opposites could be entertained and could prove successful. For example, just in the period from June to August 2005, the Christian party PDS formed six coalitions with four Muslim parties: PPP, PAN, PBR, and PBB. For its part, PBB, the self-styled successor to Masjumi, coalesced with PDS, as we have just seen, with Golkar, and, in no fewer than four cases, with PDI-P, the epitome of secular nationalism. PKS, also a strongly modernist Muslim party, formed a half-dozen coalitions with the secular PDI-P or PD.[34] These odd-couple coalitions might – and in some cases did – make for conflict between the district head and the deputy, but they reinforced the conviction among politicians that permanent interparty enmity is a bad idea.

In 2005, the Constitutional Court ruled that even parties without any DPRD representation could nominate candidates for regional executive positions if they formed coalitions with other parties (which might also lack DPRD representation) whose aggregate electoral support in the previous DPRD election crossed the threshold of 15 percent of the total vote.[35]

[33] Ibid., p. 277.
[34] Pratikno, "Political Parties in *Pilkada*," pp. 63–65.
[35] Perkara No. 005/PUU-III/2005 (Mahkamah Konstitusi Republik Indonesia).

This decision did not alter any of the electoral trends thus far identified. It merely strengthened the hand of small parties in regional elections, thus reinforcing party pluralism. Two years later, a divided Constitutional Court went considerably further and held that, inasmuch as independent gubernatorial candidates were allowed to contest in Aceh under its special autonomy regime, they must also be allowed to contest regional executive elections throughout the country.[36] What will prevent this decision from changing the structure of regional elections is that almost any independent candidate with sufficient financial resources to mount a serious campaign will surely be able to attract sponsorship from a party or coalition.[37]

THE EMERGING PARTY SYSTEM

It is worth clarifying the meaning of multipolar fluidity in the party system as it emerged from the regional executive elections. There are five key elements. In Chapter 8, we will elaborate on exactly how this kind of system was produced and on its characteristics as well.

First, there were multiple parties contending. There was more than one party for voters from each of Indonesia's aliran or streams, as well as some parties aspiring to catchall status.

Second, because of their origins in the *aliran*, most parties could count on a core of supporters. Nevertheless, if only because of intragroup party proliferation, parties were compelled to act competitively to attract votes. An election was not an event conducted to confirm the preexisting support of the various parties.

Third, that is because there were floating voters. Voters were not absolutely locked into their party affiliations. They could and did shift allegiances within streams and, especially in presidential elections, across streams. Mujani and Liddle go so far as to claim that in 2009 there had been "no consistent or solid evidence of voter polarization based on *aliran*

[36] Perkara No. 005/PUU-V/2007 (Mahkamah Konstitusi Republik Indonesia). Three justices dissented. One of the dissenters (H. Achmad Roestani) noted that the provision for independent candidates in Aceh was merely temporary. Another (H. A. S. Natabaya) rather cogently observed that, inasmuch as the constitution itself (article 6A) limited presidential slates to candidates nominated by parties, it could not be said that the constitution frowned on candidacies limited to party nominees.

[37] Potentially more destabilizing might be the continued proliferation of regions by subdividing them to create more homogeneous territories. But there are already approximately 500 regions in 33 provinces, and multipolar fluidity still seems to be the rule. Cf. Rachel Diprose, "Decentralization, Horizontal Inequalities and Conflict Management in Indonesia," *Ethnopolitics*, vol. 8, no. 1 (March 2009), pp. 107–34, at pp. 125, 130.

or Muslim religiosity in either the legislative or presidential elections," but more notably in the latter.[38]

Fourth, as voters could float between or among parties, so could candidates defect from one to another, usually within the same stream but sometimes jumping across streams to become part of a mixed pair for regional executive elections, just as Jusuf Kalla had done when he joined SBY's ticket at the national level.

Fifth, coalitions were flexible. If electoral advantage permitted, parties in the same cultural stream might line up together to present a single ticket. If not, what might seem to be quite arbitrary coalitions could be formed across streams. There was no sure route to victory from one region to another, so the system of decentralization encouraged flexibility and inhibited acting on the basis of ideology that could impair coalition eligibility. A party that pursued its own ideology to extremes could discourage more votes than its inclusion in a coalition would attract. It would, therefore, render itself an unfit coalition partner.

In producing these patterns, the role of the institutional structure, superimposed on the cleavage structure, is clear. Had the system in the regions been parliamentary in form – that is, had the regional executive been chosen, as before, by the DPRD – some elements of this system of multipolar fluidity might have been slightly different. Voters would not have been willing to float across streams in local legislative elections, any more than they had done previously at the national level except in direct elections for the president. Candidate defections would have been fewer, and party allegiances would have been firmer. Likewise, had the DPRD electoral system not been proportional, there would have been fewer parties in the DPRD and therefore fewer choices for the electorate and for party leaders seeking coalitions. The combination of list PR for the legislatures and separately elected executives at three levels – national, provincial, and regional – supported and still supports the especially multipolar and especially fluid nature of the party system.

The electoral system for the regional executive – plurality, with a minimum of 25 percent (later amended to 30 percent) to avoid a runoff – might produce systemic results different from those produced by a more conventional runoff system, with runoffs for every contest that failed to yield a majority winner, as well as by other systems that could be used to choose regional executives.[39]

[38] Saiful Mujani and R. William Liddle, "Indonesia: Personalities, Parties, and Voters," *Journal of Democracy*, vol. 21, no. 2 (April 2010), pp. 35–49, at p. 39.

[39] For an exploration, see Henk van der Kolk, "Supplementary Vote: Analysis, Applications, and Alternatives," *Electoral Studies*, vol. 27 (2008), pp. 417–23.

Yet the plurality system was more than adequate, especially given the fragmented party system established as early as 1999, to produce strong incentives for interparty electoral coalitions in most districts.[40]

THE CENTRAL-REGIONAL INTERPLAY

Following the 1999 and 2004 national elections, there had been some inclination of likeminded parties, particularly Islamic parties, to attempt to form legislative coalitions, such as the Central Axis, or Reformasi, or the group of eight mentioned earlier – all of which fell apart. To some extent, these attempts were not merely reflections of the desire of those in the same stream to coordinate. They were also responses to the fact that the secular parties, Golkar and PDI-P, were both larger, whereas the Muslim parties were smaller and more numerous.

As 2009 approached, presidential politics soon made it apparent that it might be more profitable to join forces across streams rather than within streams. Once SBY was elected with Jusuf Kalla as his vice president, and once Kalla became Golkar chairman, SBY found it convenient to lean on Golkar for legislative support. But as Kalla's own ambitions diverged from SBY's, the president began to move closer to the Muslim party PKS, which had at first declined seats in his cabinet. There was even the possibility of SBY's choosing a PKS running mate for 2009. If, on the other hand, Kalla had stayed on the ticket, PKS was considering a coalition with PDI-P, with which it had been talking.[41] At the same time, Golkar considered a partnership with PKS, and it also met with PPP leaders. It was likewise mooted that SBY's PD could coalesce with any of three Muslim parties: PKB, PAN, or PPP. The requirement that parties or coalitions putting up presidential tickets have a certain percentage of votes or seats[42] kept all options open until the results of the legislative elections were in. The possibilities were kaleidoscopic.

In contrast to the early post-1999 and post-2004 periods, the most likely coalitions were thus coalitions of opposites. More votes were to be

[40] Without producing any tendency toward two-party politics. Cf. Maurice Duverger, *Political Parties* (trans. Barbara North and Robert North; London: Methuen, 1954).

[41] Even before the 2004 elections, every party was considered a potential partner of every other, with the possible exception of the modernist PKS and PAN with the secular-nationalist PDI-P. See Edward Aspinall, "Elections and the Normalization of Politics in Indonesia," *South East Asia Research*, vol. 13, no. 2 (July 2005), pp. 117–56, at p. 139. Within a relatively short time, even this exception disappeared.

[42] I deal with these requirements, which were reset for later elections, later in this chapter.

had by joining with those who were not in competition with one's own party than by joining with those who were in such competition.

Reinforcing such calculations was the fact that all three of the major secular parties desired to field their own presidential candidates in 2009. Anticipation of this pushed the Muslim parties, all of them smaller than the three main secular parties (as the 2009 DPR elections confirmed) further down the path to aligning with one or another of the (relatively) big three.

The calculations from the anticipated presidential–vice presidential contest undoubtedly fed back into the regional executive elections of 2005–08 and legitimized strategies of coalitions across streams. Similarly, the success of those strategies at the regional level intensified the search for partners everywhere and anywhere at the national level, as the 2009 elections approached. The levels were inextricably linked.

These flexible coalition patterns, visible at the national and regional levels, did not augur an end of ideology in Indonesia. They did, however, render more permeable the boundaries between the various subcultures, and they may ultimately soften intergroup relations considerably.[43] In the final chapter, we shall return to Indonesia's version of multipolar fluidity and compare it to a number of less felicitous political configurations.

THE RECURRENT FIXATION ON FRAGMENTATION

Preparations for the 2009 national elections revived the debate over party fragmentation. The debate ranged across three sets of requirements:

[43] There is no evidence that intergroup attitudes underwent a fundamental transformation in this period. The most recent World Values Survey on such matters for Indonesia contains data on social distance collected in 2006, and it shows only very small positive changes in religious tolerance from 2001. World Values Survey Association, "World Values Survey, 1981–2008," Madrid, 2009, available at www.worldvaluesurvey.org. For hints about Javanese–Outer Island relations, suggesting that intergroup differentiation along this dimension is very much alive, see Natan B. Sachs, "Experimenting with Identity: Islam, Nationalism, and Ethnicity," unpublished paper, Stanford University, 2009. Intergroup violence, of which Indonesia had a great deal beginning in the 1990s, clustered between 1998 and 2001 and peaked around 2000. See, respectively, Ashutosh Varshney, "Analyzing Collective Violence in Indonesia," *Journal of East Asian Studies*, vol. 8, no. 3 (September–December 2008), pp. 341–59, at p. 352; Gerry van Klinken, *Communal Violence and Democratization in Indonesia: Small Town Wars* (New York: Routledge, 2007), p. 4. MAR data from the University of Maryland project also show a major decline in intergroup violence (focusing on Chinese, Papuans, and Acehnese) from 1999 to 2006. Victor Asal, Amy Pate, and Jonathan Wilkenfeld, "Minorities at Risk: Organizational Behavior Data and Codebook Version," University of Maryland, September 2008, available at http://www.cidcm.umd.edu/mar/data.asp. It seems very likely that growing intergroup tranquility facilitated political permeability, rather than the other way around.

registration of political parties, eligibility of parties to participate in DPR elections and to win seats, and eligibility to nominate presidential and vice presidential candidates.

As usual, there was a strong bias favoring parties that were national in scope. Whereas formerly a party had been required to have established branch offices in at least half the provinces, for 2009 it would need branches in 60 percent of Indonesia's 33 provinces.[44] The government had actually proposed a 75-percent requirement, which would have affected smaller parties adversely, but the DPR settled on a compromise number. Requirements for branches in districts, municipalities, and subdistricts were unaffected. For a new party to run candidates in the general election, it would still need branches in two-thirds of all provinces and two-thirds of all districts in each province.[45]

For existing parties to run candidates in legislative elections, the previous law had required that they currently hold three percent of seats in the DPR plus four percent of seats in DPRDs in half the provinces or in half the total number of cities in Indonesia.[46] In 2007, eight smaller parties, three of which held fewer than three percent of DPR seats and would therefore have been forced to merge if they wished to run candidates in 2009, united to demand a lower threshold to run.[47] The dispute over the law went on and on, as the resisting larger parties savored the prospect of a less fragmented system. Ironically enough, the former chairman of Tim Tujuh, which had earlier produced radical proposals to reduce party fragmentation,[48] had subsequently entered electoral politics, but without much success. He was among those smaller party leaders now arguing, in the name of democracy, for a reduced threshold for parties to contest – thereby confirming that an old Washington adage that "where you stand depends on where you sit" applies in Jakarta, too.[49]

As I suggested earlier,[50] provisions denying poorly performing parties future opportunities to contest were unusual and subject to criticism. It is not surprising, therefore, that this dispute was settled on terms ostensibly

[44] Law no. 2 of 2008 on Political Parties, art. 3(2)(d).
[45] Law no. 10 of 2008 on Elections of Representatives to the DPR, DPD, and DPRD, arts. 8 (1)(b), 8(1)(c).
[46] Law no. 12 of 2003 on Legislative Elections, art. 9.
[47] *Jakarta Post*, July 17, 2007.
[48] See Chapter 3, above.
[49] The adage commonly goes by the name of Miles' Law, after Rufus Miles, who worked in the U.S. Bureau of the Budget and who noted a remarkable change in the position of a bureaucrat from one year to the next as he moved from one government agency to another.
[50] See Chapter 3, above.

favorable to the small parties. The 2008 electoral law declared that any party that had qualified to contest the 2004 election was automatically eligible to contest in 2009, a provision later found to be unconstitutional.[51] This, however, was not the end of the struggle to contain legislative fragmentation, which simply moved to different terrain.

There were several different arenas in which the issue of party fragmentation played out. In each, the result was a bias favoring large parties.

The first, and probably most influential in the electoral results, concerned the establishment of a threshold for DPR representation. It will be recalled that no such threshold had been established for 1999 or 2004. Golkar argued that a party should win five percent of the national vote in order to be awarded any seats. Again, the smaller parties protested, and the threshold was settled at 2.5 percent for 2009.[52] This was a low hurdle, but it nonetheless excluded from DPR representation two of the eight parties that had protested the earlier three-percent eligibility rule.

Another issue involved what is called in electoral studies *district magnitude*, the number of seats per constituency in a constituency-list PR system, such as Indonesia's. In general, the more seats, the greater the proportionality and the more opportunities for small parties.

In 2009, the number of constituencies was increased to 77, from 69 in 2004, but the average number of seats per constituency declined. In 2004, the electoral commission, although authorized to create constituencies with as few as three seats, had created constituencies containing between

[51] Law no. 10 of 2008, art. 8(2). Actually, the statutory story is far more complicated than I have depicted it. Although article 8(2) is as I have described it, article 315 repeats the rule that only parties with three percent of the votes or at least one DPR seat in 2004 (or 4 percent of DPRD seats widely spread across half the country) were eligible to contest in 2009. Article 316(d) then provides that a party that does not meet the requirements of article 315 would nonetheless be eligible to contest in 2009 if it had won any DPR seats in 2004, and article 316(e) states that a party ineligible under article 315 would still be eligible if it meets the requirements to become a party entitled to contest the 2009 elections under other provisions of Law no. 10, which is to say it would be eligible if it meets the standards of article 8(1), which lays out the requirements for branches in two-thirds of all provinces and districts (in addition to certain other requirements), or of article 8(2), which says simply that any party that contested in the previous election is eligible to contest in the immediately ensuing election. Or, to put the matter bluntly, article 316 gives back what article 315 seems to have withdrawn from article 8. This is a remarkable piece of legislative drafting!

The Constitutional Court held the provisions allowing parties already represented in the DPR to be eligible to contest the 2009 elections unconstitutionally discriminatory against parties not already represented in the DPR. Putusan No. 21/PUU-VI/2008.

[52] Law no. 10 of 2008, art. 202(1).

six and 12 seats.[53] This was changed by law for 2009 to constituencies of between three and 10 seats,[54] making it harder for small parties to win a seat.

A third question related to the rules for acquiring seats on remainders. In a pure list-PR system, if there are 10 seats and one million valid votes, a seat can be won by any party with more than 100,000 votes, which is denominated the *quota*. If each of six parties receives 100,000 votes, then six seats are allocated by full quota, one to each party. The issue then is how to allocate the remaining four seats. Where the 2003 law allocated seats on largest remainders, the 2008 law limited eligibility for seats on less than a full quota in the first phase of allocation of seats to those parties with votes in excess of 50 percent of a full quota. If there were still seats to be allocated thereafter, a new provincial-level quota was to be calculated and seats awarded to those parties whose votes exceeded the new provincial quota. Any still-remaining vacant seats were to be distributed to those parties with the largest remainders and, finally, to those with the largest number of votes in the province.[55] Smaller parties had preferred collecting residual votes at the district level, whereas larger parties, whose support might be more widely distributed, preferred the provincial level. These new methods constituted a slightly opaque, but potentially significant, source of large-party bias.[56]

Now, in fact, the Constitutional Court later found that the electoral commission had failed to do the appropriate computations at the provincial level.[57] As a result, some seats changed hands after they had been allocated, although party balances changed little.

The court also decided another important electoral case, which changed the relation of DPR members to their constituents, but did not change the relative position of parties. In December 2008, before the election, the court invalidated a portion of the law governing open lists.[58] The relevant article had provided that any candidate with votes in excess of 30 percent of the quota would be deemed elected regardless of his or her place on a

[53] See Chapter 5, above.

[54] Law no. 10 of 2008 on Elections of Representatives to the DPR, DPD, and DPRD, art. 22(2).

[55] Compare Law no. 12 of 2003, arts. 105–06, with Law no. 10 of 2008, arts. 205–07.

[56] Members of the DPD were to be elected by the same SNTV system as in 2004. Law no. 10 of 2008, arts. 176(2)(b), 215(1). This was consistent with the prevailing view in the DPR that the status of the DPD did not require any upgrading. Other new features of the system were enlargement of the DPR from 550 to 560 seats and a modest version of open-list PR. Law no. 10 of 2008, arts. 21, 214.

[57] Putusan No. 110–111–112–113/PUU-VII/2009 (Mahkamah Konstitusi Republik Indonesia).

[58] Perkara No. 22–24/PUU-VI/2008 (Mahkamah Konstitusi Republik Indonesia).

party's list; but if there were more such candidates than available seats, or if there were fewer such candidates than seats, seats would be awarded based on the order of candidate names on the parties' lists, as is customary in closed-list systems.[59] The court held that awarding seats to candidates based on their rankings on the parties' lists, when other, lower-ranked candidates had actually won more individual votes, violated the sovereignty of the people. In other words, an open-list system must be completely open, and indeed the opinion edges close to declaring that closed lists might be altogether unconstitutional[60] – an extraordinary position and one based on a constitutional provision that in other systems might not have been thought to give rise to justiciable claims.

This decision would not affect the relative number of seats won by various parties. The handbook distributed by the election commission in 2009 advised voters to vote either for individual candidates or for the party of their choice.[61] The individual candidate's party was the beneficiary of individual votes as surely as it was of party-list votes. In counting ballots, the election commission did not use the invalidated 30-percent rule. Within parties, it simply awarded seats to candidates with the largest number of individual votes. Some 154 candidates (or about 28 percent of the DPR) won seats based on the open-list provision as so construed, compared to only two candidates who won on an open-list basis in 2004.

By all accounts, the decision favoring fully open lists resulted in a rush of aspiring candidates to their constituencies, so that they could curry favor with voters in ways candidates on a closed list did not find it necessary to do. Accountability to the electorate was undoubtedly enhanced by the decision.

As radical as the Constitutional Court decision was, it completely missed a critical point about the electoral law passed by the DPR. The 2008 law provided dramatically greater scope for individual candidates to win seats than was accorded by the 2003 law. As we have seen,[62] the 2003 statute had allowed lists to be open only to the extent that an individual candidate attracted votes equal to or greater than 100 percent of the quota. The 30-percent-of-the-quota standard was far more liberal to individual candidates, but the court seemed not to appreciate this, for it found ranked lists offensive altogether.

[59] Law no. 10 of 2008, art. 214.
[60] Perkara No. 22–24/PUU-VI/2008, at 47–51.
[61] See *Buku Panduan Suara Sah dan Tidak Sah* (Handbook of Valid and Invalid Ballots) (Jakarta: Komisi Pemilihan Umum, 2009).
[62] See Chapter 5, above.

TABLE 3. *Votes and Seats, Major Parties: DPR Elections, 2009*

Party	Votes (%)	Seats (%)	Seats (No.)	Change in Seats from 2004 (No.)
PD	20.9	26.4	148	+91
Golkar	14.5	18.9	106	−22
PDI-P	14.0	16.8	94	−15
PKS	7.9	10.2	57	+12
PAN	6.0	8.2	46	−6
PPP	5.3	6.8	38	−20
PKB	4.9	5.0	28	−24
Gerindra[a]	4.5	4.6	26	n. a.
Hanura[a]	3.8	3.0	17	n. a.

[a] Gerindra and Hanura were new parties in 2009.
Source: KPU, *Terbitkan Buku Hasil Pemilu*, 2009, pp. 31–42, available at www.kpu.go.id.

Left untouched in this litigation was the large-party bias of the electoral law. It is difficult to know how much skewing was attributable to each of the law's various features, but undoubtedly a large effect was wrought by the 2.5 percent threshold on a fragmented party system.

INTERPRETING THE 2009 DPR RESULTS

The changes we have been focusing on were very much in accord with what Benjamin Reilly has described as a trend toward "more majoritarian" – that is, less proportional – electoral law in East and Southeast Asia generally.[63] Mixed-member systems have found favor in some states in the region, while in PR systems remainders have been adjusted to disadvantage smaller parties. In the aggregate, the changes introduced in Indonesia had a large impact. The effective number of parties in the DPR was reduced by nearly a full percentage point, from 7.11 in 2004 to 6.2 in 2009. Only nine parties won any seats at all, compared to 17 that sat in the previous legislature. Twenty-nine parties, all qualified to contest, received altogether more than 18 percent of the vote but elected no one to the DPR. (As I shall soon show, having a smaller number of parties represented in the DPR had adverse effects on Golkar and PDI-P when they looked around for partners to help nominate presidential tickets.) The struggle against

[63] Benjamin Reilly, *Democracy and Diversity: Political Engineering in the Asia-Pacific* (Oxford: Oxford University Press, 2006), pp. 98–114. Most of the countries that have gone in this direction, however, do not possess Indonesia's pattern of cleavages.

party fragmentation was finally getting somewhere, and it was not over, as changes in the laws for the 2014 elections would show.[64]

For certain regionally concentrated minorities, however, this was not an unmitigated benefit. Among the casualties in 2009 was a small Christian party, PDS, that was strong in religious-minority areas, as we have seen in the regional election results, and PBB, the modernist Muslim party that was cast as the successor to Masjumi. PBB had had pockets of support in certain *santri* areas. In 2004, these parties had won 12 and 11 seats, respectively, in the DPR, but neither won a single seat in 2009.

Even disaggregating to the constituency level, it is impossible to know exactly how many seats these parties would have won just on the basis of raw total votes, because the data do not permit a reassessment of the way particular seats were apportioned on the basis of less than full quotas. In Eastern Indonesia, Papua, and North Sumatra, PDS won more votes than several parties that were contesting there, and it would have won anywhere from five to seven DPR seats had it not been for its failure to meet the national threshold or the criteria for apportioning seats at the constituency or provincial level. In North Sulawesi alone, PDS received 120,000 votes, while PAN received only 70,000 votes. Because of the threshold, PDS won no seats on those votes, but PAN won a seat. Similarly, PBB had support in West Java and western Nusa Tenggara, where it won more votes than were won by some parties that were awarded seats. In one constituency, where seven parties won seats, PBB won more votes than four of those parties but won no DPR seats. Overall, in these areas, it would have won from three to six seats, had it not been for the measures put in place to reduce the seats won by small parties.[65]

Even had PDS and PBB won seats at the constituency level, neither was able to cross the 2.5 percent national threshold. The overall point is clear enough. In a relatively homogeneous country, the measures adopted to counter party proliferation would be insignificant. But, in Indonesia, certain parties with regional appeal, which exist because of the country's particularisms and its dispersed compartments of minorities, are affected adversely by the quest to avoid party fragmentation. Indonesia is a sprawling country with many such particularisms.

[64] A prominent Golkar personality reflected after the 2009 election that it was important to have even fewer parties in the DPR and that perhaps first-past-the-post would be a good system for that. F.N. 3:110. The desire for plurality elections and a two-party system was recurrent.

[65] I am indebted for these calculations at the constituency level to an excellent memorandum prepared by Ong Kian Ming, June 12, 2009.

There is, of course, tension here between the electoral threshold and the promise of devolution. Parties that are strong in particular regions and are strong enough nationally to meet the strict requirements for party registration and participation in elections, but not strong enough to surmount the threshold, might still win DPRD seats and regional executive positions.[66] Yet they will have no voice at the center, save whatever they can muster through ostensibly nonpartisan DPD elections, which are conducted at the provincial rather than the lower, regional level. The 2009 election results highlight the dissonance between support in the regions and a voice at the center. In 2012, however, as we shall see shortly, the DPR made it virtually impossible for regional parties to succeed at either level.

Of course, the electoral rules were not the only source of the volatility of electoral results from 2004 to 2009. The party system was still a work in progress, and it was much affected by presidentialism. SBY's personal popularity clearly translated into a large swing of votes in favor of his party. Most of these swing votes probably came from voters who might otherwise have supported a secular party, such as Golkar or PDI-P, or the most tolerant traditionalist Muslim party, PKB, whose geographic base overlaps SBY's region of origin. In West and Central Java, which had considerable PDI-P support in 1999 and heavy Golkar support in 2004, PD did very well in 2009. Something similar had happened with the swing from ex-PAN and PPP voters to PKS in 2004. Even in that election, voters were willing to move with alacrity among parties in the same stream. Although parties have cores of supporters, many are less loyal from one election to the next. Within streams, voters can float. Mujani and Liddle also found that a long-standing difference in voting behavior between *santri* and *abangan* voters in their respective preference for the traditionalist PKB and nationalist PDI-P was likely obliterated in 2009, so that some orthodox Muslims probably voted for PDI-P[67] – meaning that voters can float from one end of the spectrum to the other.

Measures of electoral volatility do not capture the extent of these changes, because they do not differentiate floating across streams from

[66] And if those parties atrophy as a result of their failure to win national seats, their supporters may realign with an appropriate national party. But regional particularisms are not well served by such possibilities, for regional executive candidates are disproportionately chosen not in the regions but by central party headquarters, where minorities in the party may not be well represented.

[67] Mujani and Liddle, "Voters and the New Indonesian Democracy," in Edward Aspinall and Marcus Mietzner, eds., *Problems of Indonesian Democracy* (Singapore: ISEAS, 2010), pp. 75–99.

voting within streams.[68] Overall volatility has been high in Indonesian legislative elections, 29.2 from 1999 to 2004 and 29.8 from 2004 to 2009, measured on the Pederson index, but it is higher in some other newly democratic countries.[69] What is more revealing is how high Indonesia's volatility is when compared to the volatility of severely divided democratic countries with multiparty systems in which voters are closely tied to ethnic parties. In Northern Ireland, where parties are based on group identity but there have been important voter shifts within streams, volatility ranged only from 10.7 in 1998 to 17.5 in 2003 and 11.2 in 2007. Belgium, with the same general condition, is in the same volatility range. Or consider a survey in Bosnia before the 2010 election, in which there was significant intragroup floating and changes in relative party standing, especially among Bosniaks. Voters were asked, "If you somehow decided to vote for another political party [than your first choice], for which party would you vote?" In the Federation, populated by Bosniaks and Croats, virtually *no* Bosniaks would be willing to vote for a party identified as a Croat party, and only five or six percent of Croats would be willing to vote as a second choice for a party identified with Bosniaks.[70] In Northern Ireland and Bosnia, not all voters are tied to a single ethnic party, but the vast majority are committed to ethnic-party voting. Indonesia is quite obviously in a qualitatively different category from Northern Ireland, Belgium, and Bosnia. Party identification is in decline, and so is the determinative force of cultural affiliation. The votes of many voters are available in a highly competitive and decreasingly segmented system.

For the rest, what is notable about the 2009 election is the strong overall swing toward secular parties. PPP, which placed fourth in votes and third

[68] Measures of individual voter volatility from 2004 to 2009 were available in voter surveys conducted by Lembaga Survei Indonesia, but these data were not made available to me.

[69] Mogens N. Pederson, "Electoral Volatility in Western Europe," *European Journal of Political Research*, vol. 7, no. 1 (January 1979), pp. 1–26. Bulgaria, Latvia, and Macedonia are all multiparty systems with higher interelection volatility of results in the same general time period than Indonesia's, whereas most more established democracies display considerably lower levels of volatility. Sources for the calculations are Scott Mainwaring's database, which he kindly shared, and country-level electoral data for countries not in the database. Calculations from the latter were performed by Simon Weschle of Duke University. For other uses of the volatility database, see Scott Mainwaring et al., "Extra System Electoral Volatility and the Vote Share of Young Parties," paper presented at the Annual Meeting of the Canadian Political Science Association, May 28, 2009.

[70] National Democratic Institute, "Public Opinion Poll in Bosnia and Herzegovina (BIH), October 2009," available at http://www.ndi.org/Public_Opinion_Poll_Bosnia_Herzegovina_1009.

in seats in 2004, lost more than a third of its vote in 2009, and PBB lost almost a third of its vote, enough, as we have seen, to deprive it of any seats at all. PKS and PAN held their own, but, among parties awarded seats in both 2004 and 2009, the share of votes won by secular parties increased from 48 percent to almost 58 percent, while their share of seats grew from 53 percent to 70 percent.[71] In 2009, as we shall see shortly, all six presidential and vice presidential candidates were drawn from the secular stream.

Mujani and Liddle point out that secular politics has deep roots in Indonesia's Muslim society, going back to the struggle for independence, and secular tendencies were enhanced by certain of Suharto's policies as well as by contributions from prominent religious leaders, such as Nurcolish Madjid and Abdurrahman Wahid.[72] In a 2007 survey, in which support for restrictive Islamist values and practices was probed, only one-third of respondents were supportive of those values and practices, while 57 percent of respondents were classified as secularist; and, even then, only 13 percent of voters supported Islamist parties in 2009.[73] As a prominent PKS parliamentarian summed up the pre-election mood, "Radicalism will not have any place in this country."[74] The results proved him right.[75]

The trend toward secular parties in 2009 had, however, another prop. Large-party bias in the electoral system favors secular parties in Indonesia disproportionately, because they are larger to begin with. In 1999, the greatest gap between votes and seats among parties that secured representation was 3.6 percent; in 2004, it was 3.2 percent; but in 2009, the top two finishers both had much wider gaps – 5.5 percent for PD and 4.4 percent for Golkar – and all but one of the top nine parties received a seat bonus. Indonesia's voters chose secular parties, but the electoral system, now less proportional than before, magnified the effect of their choice. Had the

[71] This counts the seats won by two small secular parties that are vehicles for the ambitions of two Suharto-era military officers, General Wiranto and Suharto's son-in-law, Prabowo Subianto, but that nevertheless won between them more than nine percent of the seats. Even without those seats, the shift toward the secular parties was impressive.

[72] Mujani and Liddle, "Muslim Indonesia's Secular Democracy."

[73] The survey results are reported in ibid., pp. 576–82.

[74] Zulkieflimansyah, quoted in the *Wall Street Journal*, February 19, 2009.

[75] But see Thomas B. Pepinsky, "Dominant but Weak: Signs of Underlying Fragility in Nationalist Parties May Benefit Islamic Parties in Future Elections," *Inside Indonesia*, no. 97, July–September 2009, available at http://www.insideindonesia.org/edition-97/dominant-but-weak, suggesting that leadership succession issues in the three largest secular parties bode well for the future of Muslim parties.

three top parties received a strictly proportional allocation of seats, they would have won 277 seats, rather than the 348 they were awarded in 2009. They received, in other words, a seat bonus of 13 percent of the total seats in the DPR. Disproportionality was at least as important as the growing preference of voters for secular parties in accounting for their success in winning the lion's share of seats.

For Indonesia, readings on the Gallagher Index of Disproportionality nearly doubled from 1999 to 2009, from 0.032 in 1999 to 0.045 in 2004, to 0.060 in 2009.[76] For systems in which all seats are awarded by list PR, this is a somewhat high figure, especially so when compared to Finland, Denmark, Austria, the Netherlands, Israel, and South Africa, in some of which the number begins to approach 0; it is higher than some mixed-member systems, such as Germany, but lower than others, such as Japan, and considerably lower than high-threshold systems, such as Russia.[77] Worldwide, the benefits of disproportionality usually accrue to larger parties in a system; in Indonesia, those happen to be the secular parties.

What is lost in these results is not merely representation for locally significant minorities but also, with more large-party bias, a possible decline in the degree of substream competition. There is no need to exaggerate this effect. There is plenty of intragroup competition on the secular side. On the Muslim side, there is still at least one party for every taste – traditionalist, modernist Islamist, and modernist non-Islamist – but, among Muslim parties, only PKS won as many as 10 percent of the seats, and the ultimate survival of one or two of the others may be doubtful.

Nevertheless, at the national level, as in many regions, this was still very much a multiparty system. Furthermore, the system still had possibilities for fragmentation – witness the creation of two new secular parties for 2008, as vehicles for their leaders to be available as vice presidential contenders, as well as a major defection from PAN over Amien Rais' support for SBY's candidacy for reelection. Even Indonesia's presidentialism contains perverse incentives to proliferate parties. Yet, with further tightening of the requirements to contest and to win seats, some measure of the opportunistic flexibility that was so visible – and had such benign

[76] Some caveats: The 1999 calculations excluded parties that won less than 0.2 percent of the total vote and won no seats. Such parties won, in the aggregate, 3.8 percent of the total vote. The 2004 calculations excluded parties that won less than 0.6 percent of the total vote and won no seats. Such parties won, in the aggregate, 0.2 percent of the total vote.

[77] See Michael Gallagher and Paul Mitchell, eds., *The Politics of Electoral Systems* (Oxford: Oxford University Press, 2005), Appendix D.1, p. 621.

effects – in the regional elections of 2005–08 might be lost at the national level. We shall see very shortly that further tightening was very much on the agenda after 2009.

A major moderating lesson of those regional elections was that it is electorally dangerous to make permanent allies or enemies. There is a strong tradition to the same effect that emerged from the post-Suharto constitutional process at the national level, and it is certainly true that, even with a 27-percent plurality of seats in 2009, SBY's party did not have anything more than the rudiments of a working coalition. His candidacy for president in 2009 was supported by all four Muslim parties with elected representatives in the DPR, as well as by a large number of smaller parties. Conspicuously absent were PDI-P and Golkar, which were running their own presidential candidates. PDI-P and Golkar had been discussing an opposition coalition even before the presidential election. If that arrangement had been consummated, such a coalition would, on the surface, constitute a secular bloc, but Golkar actually has considerable support from observant Muslims. In the end, PDI-P was left alone in opposition, but with Megawati's husband, Taufik Kiemas, placed in the chair of the MPR, with SBY's obvious approval. PDI-P was a party with a foot on each side of the aisle.

A point easily obscured by the overall vote and seat totals is the way in which voters exercised their sovereignty. Given the shifts, up and down, in party support, it is easy to understand that 70 percent of DPR members elected in 2009 had not been in the 2004–09 legislature. But the shift that made the Democrats the largest party conceals the fact that half of that party's incumbent candidates lost their seats. PD representatives were, in the first instance, those who signed on because they were fans of SBY. Many were ex-bureaucrats, former Golkar politicians, or retired military officers, and some had doubtful backgrounds. In a surge for SBY's party, voters were nonetheless discriminating in evaluating the performance of their representatives, and they did not always like what they found.

MAJORITARIANISM AND THE PRESIDENCY

In Indonesia, the presidential elections follow the legislative elections by three months. That lag permits the law to specify restrictions on candidate nomination according to the share of votes and seats won by parties in the DPR. In 2004, parties or coalitions of parties with three percent of DPR seats or five percent of votes nationally in the DPR elections were eligible to

nominate slates of presidential and vice presidential candidates.[78] For subsequent elections, according to the 2003 law, these requirements were to be raised to 15 percent of DPR seats or 20 percent of votes in the DPR elections.[79] In 2008, however, the DPR passed a new law on presidential elections, which raised these requirements to 20 percent of DPR seats or 25 percent of DPR votes.[80] The explicit intention was to limit the number of candidates and perhaps even avoid a runoff.[81] Large parties, notably Golkar and PDI-P, pushed the new requirements, while smaller parties, such as PAN, PKS, and – ironically, as the 2009 elections turned out – SBY's own party, PD, at first resisted the changes. In the event, the changes had the effect of limiting the number of tickets to three. They also allowed PD, with its new seat fraction comfortably above the nomination threshold, to nominate its own ticket. No other party was able to put up a ticket on its own. The limited number of tickets made a one-round election more likely. For 2014, there were proposals by large parties to raise nominating requirements still further. These proposals stalled in 2012, as even the PD favored lowering the requirements and some smaller parties demanded greatly reduced barriers to nomination so that their leaders could become candidates.

SBY's ticket in 2009 was sponsored by multiple parties. The fact that many smaller parties lined up with a popular sitting president made it harder for PDI-P and Golkar to construct their tickets. Neither had enough votes or seats to nominate a slate by itself, given the new nomination threshold. With all four Muslim parties aligned with PD, the choices available to PDI-P and Golkar were quite limited. Each chose a candidate from one of the only two remaining parties that had sufficient votes to cross the 2.5 percent threshold for DPR seats. Had PDI-P and Golkar not done so, they would have been obliged to put together a less-than-credible coalition with parties that had gained between 1.79 and 0.11 percent of the vote. The enhanced requirements to nominate tickets were enacted at a time when no one expected Golkar or PDI-P to perform so poorly in the DPR elections and also when no one could have anticipated that all other parties with substantial support would flock to endorse SBY's ticket. In combination with those unanticipated conditions, the new requirements

[78] Law no. 23 of 2003 on Election of the President and Vice President, art. 101.

[79] Ibid., art. 5(4).

[80] Law no. 42 of 2008 on the General Election of the President and Vice President, art. 9. These requirements were sustained against challenges in the Constitutional Court. Perkara No. 51–52–59/PUU-VI/2008 (Mahkamah Konstitusi Republik Indonesia).

[81] See "Indonesia 2009: The Presidential Election Law, A Step Towards Consolidating Democracy in Indonesia," iNUSANTARA networks, www.inusantara.com.sg.

almost eliminated by law all competition in the presidential election. This would have been a calamity for the presidential electoral system.

Had the previous requirements been in effect, both PDI-P and Golkar would have had the freedom to choose their tickets by themselves, as SBY did. Both could have chosen their most attractive presidential and vice presidential candidates.

As things turned out, Megawati's constrained choice was a thoroughly ironic one. She opted for Suharto's ex-son-in-law, former army general Prabowo Subianto, discredited after his alleged role in fomenting violence in Jakarta just before Suharto's fall and later found by a military honor board to have been involved in kidnapping anti-Suharto activists. Prabowo's party, Gerindra, won over four percent of the DPR seats, enough to put PDI-P over the 20 percent nominating threshold by 1.6 percent. Despite Gerindra's relatively poor showing, Prabowo had demanded the top slot on the ticket, causing ill will in the PDI-P during the negotiations. In the end, he relented.[82] This ticket was an odd couple, with the daughter of the person Suharto had deposed combining with one of Suharto's favorite officers, who had repressed the anti–New Order forces that Megawati had come to symbolize.

Golkar's ticket was more conventional. It put together Jusuf Kalla with retired general Wiranto, who had stripped Prabowo of his Jakarta command in 1998. Wiranto had run third for president in 2004 but now accepted the second position. Again, this was a marriage of convenience. PDI-P was short by less than one percentage point of DPR seats required to nominate a ticket, and Wiranto's Hanura party – a Golkar splinter, in any event – brought more than three percent of DPR seats as a dowry. Kalla and his choice were not, however, uniformly popular within Golkar, factions of which saw Kalla as a weak competitor to SBY and had wanted him to stay on the sitting president's ticket.[83] But since Yudhoyono would not promise that Kalla would necessarily be his choice if Golkar wished to provide a vice presidential candidate for him, the party was relegated to running the Kalla-Wiranto ticket.

Golkar and PDI-P had overplayed their hands by agreeing to raise the nomination requirements. They made two miscalculations. By failing to anticipate the possible range of electoral outcomes in the then-forthcoming DPR elections, they put the nominating requirements beyond their exclusive reach, and they also failed to appreciate the power of presidential incumbency, the magnetic attraction of SBY's ticket for the smaller parties, which, by adhering to it, made themselves unavailable for nominating

[82] *Jakarta Post*, May 15, 2009; May 16, 2009.
[83] F.N. 3:75 (a prominent Golkar politician).

coalitions with Golkar or PDI-P. Both PKS and the PPP had earlier been discussed as parties that might provide vice presidential candidates in a coalition with one of the larger parties, but their endorsement of Yudhoyono's nomination removed them as possible partners. And so both PDI-P and Golkar were left with relatively unpopular tickets.[84]

All three tickets ended up with a retired general on them, each with a different history in the last phase of Suharto's regime. Their presence could be taken as a sign of public nostalgia for the New Order in hard economic times, as some surveys suggested,[85] or simply a manifestation of the fact that Indonesia's democratization did not entail a radical break with the previous regime, replete with lustration of its personnel. With a few exceptions, those who wished to compete on democratic terms could do so.

The difficulty experienced by Golkar and PDI-P in meeting the presidential nominating requirements might suggest that a return to the standard of 2004 – 15 percent of DPR seats or 20 percent of DPR votes – would be in order. Unfortunately, it probably suggested to the three largest parties in the DPR that further assaults on party fragmentation were justified. Of course, these could backfire if, for example, the 2.5-percent seat threshold were adjusted upward, perhaps eliminating small parties such as Hanura and Gerindra as possible suppliers of votes or seats to meet the nominating standard. In the 2012 electoral law, the threshold was indeed raised, as we shall observe.

Unless the large parties show more ability to coalesce among themselves than they have so far exhibited, they would be ill-advised to force more party consolidation than existed in 2009. If they did, they could suffer a shortage of partners for presidential tickets in lean years. It would be safer for them to leave the multiparty system where it is and lower the presidential nominating standards – safer for them, better for their prospects in regional elections, and better for Indonesia's multipolar fluidity.

A FIRST-ROUND PRESIDENT

It was no surprise that Yudhoyono won the 2009 election on the first round, with a 60.8 percent majority (to Megawati's 26.8 and Kalla's 12.4 percent) and widely distributed support across the country. He won every

[84] See the survey results reported in *Jakarta Post*, May 14, 2009.

[85] See Marcus Mietzner, "Indonesia in 2008: Democratic Consolidation in Soeharto's Shadow," in Daljit Singh, ed., *Southeast Asian Affairs 2009* (Singapore: Institute of Southeast Asian Studies, 2009), pp. 105–23, at pp. 111–12.

province except Jusuf Kalla's home province. The campaign had all the earmarks of a personal contest and none of the signs of *aliran* politics. The likeability of the winning candidate was a decisive factor in voter decisions, as were voter views of the economy and government policy.[86] A very well-funded campaign featured extensive use of television.[87] Party identification, already declining,[88] played a reduced role in voting, and so did religion, ethnicity, and even region. A great many Golkar party identifiers voted for SBY, as did supporters of overtly Muslim parties. Remarkably, 63 percent of *santri* Muslims and 62 percent of *abangan* Muslims voted for the SBY-Boediono ticket. Among NU and Muhammadiyah supporters alike, the SBY ticket won convincing majorities (64 percent and 58 percent, respectively), although the organizations favored different candidates. The ticket also secured votes from substantial majorities of several major ethnic groups, with non-Javanese often outpolling Javanese in support for the two Javanese candidates. (An exception was Jusuf Kalla's Bugis group, 70 percent of whom voted for their favorite son.) And while Megawati got many more votes from Java than Kalla did, and Kalla received twice as many votes in the Outer Islands as he did in Java, the all-Java SBY ticket did equally well in both areas.[89]

Neither Golkar nor PDI-P could hold its supporters in the face of SBY's broad appeal. This had also been true in 2004, when significant minorities of those who had voted for those parties, as well as for the PPP, in the DPR election abandoned their party in the presidential election.[90] Voters from both Golkar and PDI-P defected to the incumbent president in 2009.[91] Roughly one-fourth of Golkar identifiers voted for SBY. Even in the PDI-P heartland of Central Java, SBY took votes from Megawati. PKS, a sponsor of SBY's candidacy, could not compel him to consult it on his choice of a

[86] Saiful Mujani and R. William Liddle, "Indonesia: Personalities, Parties, and Voters," *Journal of Democracy*, vol. 21, no. 2 (April 2010), pp. 35–49.

[87] The PD had privately funded consultants and support from well-known businesses and business personalities. Politicians from other parties, religious and secular, complained that they did not have the funds available to a popular front-runner. F.N. 3:82, 99.

[88] Asia Foundation, "Democracy in Indonesia: A Survey of the Indonesian Electorate," Jakarta, 2003, p. 100.

[89] For all of these numbers, see Lembaga Survei Indonesia, "Arah Baru Perilaku Pemilih" (New Direction in Electoral Behavior), Jakarta, July 8, 2009, pp. 7–10. This was an exit poll.

[90] See the studies summarized in Andreas Ufen, "Political Parties in Post-Suharto Indonesia: Between *Politik Aliran* and 'Philippinisation'," GIGA Working Paper no. 37, Hamburg, 2006, p. 15.

[91] Even the foreign press was able to pick up anecdotal evidence of this phenomenon. See, e.g., *South China Morning Post*, July 1, 2009.

secular vice presidential candidate,[92] but this did not impair his appeal to Muslim voters. Yudhoyono's carefully cultivated image of effectiveness, his conspicuously calculated association with Muslim causes,[93] his government's cash grants to the poor, and its prosecution of corruption cases allowed the incumbent to be open to voters of all stripes. Although his party's base is more limited – its representation in the DPR has more non-Muslims than any other except PDI-P – SBY understood the majoritarian imperative during his term of office and during the campaign.

After the presidential election, in which no ascriptive and cultural characteristic seemed to play a causal role in electoral choice, survey researchers pronounced "primordial politics dead [*sudah mati*]."[94] Leaving aside the doubtful term *primordial*, if it were completely true that ethnic, religious, *aliran*, and regional political affinities had disappeared, they would not have been visible in the DPR election. But, as we have seen, they were visible there.

What is notable about the presidential election is not that such affiliations died but that they were extraordinarily sensitive to the incentives of the two different electoral systems. With open-list PR for the DPR, particularism could continue to matter (although it mattered much less than before), especially when no party could aspire to capture a majority of seats. With the majoritarian system for the presidency, on the other hand, the breadth of the appeal of a ticket mattered: for candidates, it was not a question of matching a particular group preference here and another there but of attempting to be sufficiently attentive to the needs of voters generally, of being adequately but not adamantly Muslim, yet signalling a secular identification – neither of the winning candidates' wives wore a head covering, yet in *santri* Aceh the ticket won 93 percent of the vote, and in *santri* West Sumatra it won 87 percent – of downplaying divisive issues and focusing on personality and on the record of the first term.

The new eligibility rules for the nomination of presidential tickets also enhanced the majoritarian character of the presidential electoral formula. With only three eligible tickets, it became easier to think of the contest as involving a majority winner in the first round. Had there been four tickets – the three that actually ran plus a strong Muslim ticket with the backing of

[92] *Wall Street Journal*, May 16, 2009. Several Muslim parties complained that Boediono was insufficiently Islamic, but that did not lead them to defect from supporting the SBY-Boediono ticket.

[93] A carefully calculated image. F.N. 3:68, 91.

[94] Lembaga Survei Indonesia, "Arah Baru Perlaku Pemilih," p. 21.

the main Islamic parties – what would have mattered would have been securing enough votes to make it to the second-round runoff. In that case, particularistic appeals would have been more useful in the first round. But with only three tickets and a starting advantage for a popular president, it became plausible to aim at the outset for a strong majority, which would simultaneously meet the geographic distribution requirement of the first round. That strategy prevailed.

Although *aliran* particularisms are not dead, voters could not act on them easily in the presidential election, because of its incentive structure. After all, with such limited choices among candidates, there was not a matching candidate for each particularistic affiliation. For whom, after all, would a traditionalist Muslim want to vote when no candidate could be described in such terms? Similarly, when the governor of formerly separatist Aceh, an ex-guerrilla rebel, endorsed SBY, why would even a voter with strong Outer Island preferences be reluctant to do the same? Undoubtedly, some such people did vote for Kalla, but most did not, just as most staunch secularists rejected Megawati. When the contest provides only the most imperfect match of candidates to the specific cultural affiliations of most voters, there is every reason for those voters to see the contest in other terms.

The more they do so, the softer those affiliations are likely to become. They can, of course, be revived in local and parliamentary elections and in social movements, such as those to impose local *Shariah*. But there has been a change in their overall salience. Now voters can move from party to party, mostly within streams, in local and parliamentary elections, as secular voters did when they deserted Golkar and PDI-P for PD in the 2009 DPR elections. Politicians can, with impunity, move across streams in forming coalitions at the local, parliamentary, and presidential levels, and voters can easily do the same, as they did in exceedingly large numbers in the 2009 presidential election. That election did not change the multipolar character of Indonesian politics, but it enhanced greatly its fluidity at both the party-alliance level and the voter level.

Add to this the evidence of cross-stream coalition building in the 2005–08 regional executive elections, and it is clear that there is a powerful increase in multipolar fluidity in general, a great part of it attributable to direct election of regional and national executives in a fragmented party system. The combination of institutions – first, regional and national legislative electoral formulae that preserve the multiplicity of parties and, second, executive electoral systems that require cross-party collaboration – has produced major systemic change.

THREE BIASES: LARGE-PARTY, PRO-INCUMBENT, AND ANTI-REGIONAL

This systemic change was imperiled as the 2014 elections approached. Large-party bias returned with a vengeance as the DPR began rather early to contemplate new electoral requirements for the 2014 election. In 2011, it enacted a new statute amending the 2008 political parties law.[95] The law required parties to have branches in every province and in 75 percent of the cities and districts in each province.[96] These provisions were clearly designed to kill any party with merely regional appeal, nearly all of which had already been eliminated by the 2.5 percent national threshold in any case. The "vision" of SBY's Democratic Party, said a Democrat legislator, "is for there to be only two parties in Indonesia," as in the United States.[97] That vision was not his alone. It was shared in other large parties, especially among some Golkar leaders.

The aim of most legislators may have been more modest, but it was certainly to reduce the number of parties with DPR representation. In 2011, a new electoral law was being discussed. There were some extravagant proposals to raise the threshold to between five and 10 percent and other, equally extreme proposals to reduce the number of seats per constituency.[98] Smaller parties argued that, if the threshold were to be raised, there ought to be a provision allowing parties with vote totals below the threshold to combine their totals in order to secure representation. In a large country such as Indonesia, five percent of the vote consists of many millions of voters, and a threshold of this kind would, opponents contended, deprive religious minorities and small ethnic groups of their representation.[99] In anticipation of more restrictive provisions, some small parties merged with larger ones, and others abandoned their ambition to run candidates.

One argument for smaller constituencies derived from the completely open character of the lists that were to be prescribed for the 2014 elections. Open lists encourage much more contact between candidates and their constituents than closed lists do. Some of the previous constituencies were too large to permit representatives to make contact all across the area they

[95] Law no. 2 of 2011 on the Amendment to Law no. 2 of 2008 on Political Parties.
[96] Ibid., art. 3(2). The law also required branches in half of the subdistricts in every district.
[97] Quoted in *Jakarta Globe*, January 11, 2011.
[98] See ibid., January 6, 2011. I am also indebted to Andrew Reynolds for a personal communication on these matters, May 13, 2011.
[99] *Jakarta Post*, January 11, 2011.

were to represent. This is a serious consideration, but most considerations weighed heavily against smaller constituencies that would deprive small parties of the chance to win seats.[100]

All but the two smallest parties were willing to raise the threshold to three percent, but Golkar and PDI-P were unusually persistent in advocating five percent, while SBY's PD argued for four percent. Initially, Golkar and PDI-P also wanted constituencies of between three and six seats, while PD was content with three to eight. All other parties wished to keep the number at between three and 10, as in 2009. There were also differences among parties on seat apportionment by province and the calculation of remainders.[101] Outside experts counseled large-party politicians that Indonesia's multiparty legislature and multiparty cabinet had not given rise to instability in need of radical measures of rectification, but the large parties were unmoved. In an advisory paper, Andrew Reynolds and August Mellaz noted that a four-percent threshold would likely waste 22 percent of all votes cast, given Indonesia's fragmented party system.[102]

Finally, the issue was settled by adopting a 3.5 percent threshold in the 2012 electoral law.[103] This was a level conveniently located just below the percentage of votes obtained by the smallest parties then sitting in the DPR.

Those small parties came out relatively well in the new electoral law. They might benefit slightly from a liberal provision allocating seats on largest remainders.[104] Moreover, parties already sitting in parliament were excused from proving compliance with the exceedingly difficult preconditions for running candidates in DPR or DPRD elections – namely, branches distributed as specified in the parties law and, in addition, large numbers of members holding membership cards and distributed all over the country.[105] A similar exemption in the 2008 law for parties already represented in the DPR had been held to be unconstitutionally discriminatory against parties not already in the legislature,[106] and this provision was very likely

[100] I owe this point to Sarah Shair-Rosenfield.

[101] I am indebted to August Mellaz for a personal communication about these debates, June 4, 2011.

[102] Andrew Reynolds and August Mellaz, "Indonesia: Areas of Electoral Law under Discussion," draft paper for IFES, June 5, 2011.

[103] Law no. 8 of 2012 on the Election of Members of the Dewan Perwakilan Rakyat, the Dewan Perwakilan Daerah, and the Dewan Perwakilan Rakyat Daerah, art. 208.

[104] Ibid., art. 212.

[105] Ibid., art. 8. Article 8(2) imposes the draconian requirements. Article 8(1) exempts parties already sitting in the DPR and DPRD from complying with them.

[106] Putusan No. 12/PUU-IV/2008 (Mahkamah Konstitusi).

to meet the same fate. Indeed, a constitutional challenge to the provision was launched almost immediately.[107]

There had been considerable debate in the DPR about whether party lists should be open or closed. PDI-P had fought for closed lists and assembled an impressive coalition of likeminded parties on this issue, arguing that open lists paved the way for wealthy candidates to publicize themselves and so win seats. Early on, only Golkar and SBY's Democrats were staunchly in favor of reauthorizing the open-list system. The smaller parties were more concerned about keeping the threshold at a modest level. Golkar, which had lobbied for a five-percent threshold for DPR seats, was willing to lower this number to four percent in exchange for support for open lists.[108] PDI-P was willing to do an even better deal (three percent) in return for closed lists,[109] but with Golkar and the DP opposed to closed lists, this was a harder bargain to sell to the smaller parties. Finally, PAN, noting that four parties wanted four percent and five wanted three percent, proposed the 3.5 percent threshold that was enacted.[110] In the process, smaller parties (PAN, PPP, Gerindra, and Hanura) defected to the open-list proposal, which passed.[111]

Interestingly, there was significant support for a five-percent threshold for DPRD elections.[112] This proposal, aimed squarely at small, regionally popular parties, failed. As we shall see, another way was found to deal with those parties that would not jeopardize the DPRD positions of smaller national parties seated in the DPR, some of which might not clear a five-percent DPRD threshold.

Similarly, proposals to reduce district magnitude to three to eight seats for the DPR and DPRD – proposals sponsored by Golkar and PDI-P and aimed at all small parties[113]– did not gain sufficient support to pass. District magnitudes were left at three to 10 seats for the DPR and three to 12 for the DPRD.[114]

On the whole, despite many months of debate and several divided votes, changes to the electoral provisions for the DPR were relatively modest, especially in view of the initial aspirations of the large parties to squeeze

[107] *Jakarta Globe*, April 20, 2012.
[108] *Seputar-Indonesia.com*, April 6, 2012.
[109] Ibid.
[110] *Nasional.kompas.com*, April 10, 2012.
[111] Law no. 8 of 2012, arts. 5(1), 215.
[112] *Sumbawanews.com*, April 12, 2012.
[113] *Nasional.kompas.com*, April 11, 2012.
[114] Law no. 8 of 2012, arts. 22(2), 24(2).

smaller parties out of the national legislature. What emerges from the provisions of the law concerning the DPR, especially article 8 on the requirements for parties to run candidates, is a powerful attempt to impede new entrants. The DPR provisions are marked by modest large-party bias and strong pro-incumbent bias.[115]

The law also specifies the electoral system for the DPD. It leaves the system for the regional house unchanged: the single nontransferable vote,[116] a system with serious representational deficiencies that have been described earlier. Although DPD members and certain segments of public opinion were eager to upgrade the powers of the DPD, such sentiments were not widely shared in the DPR. If the acid test of the significance of devolved government is the power of the second house, the DPD cannot meet that test.

That brings us, appropriately, to the provisions of the 2012 electoral law concerning the DPRD. Those provisions, two in particular, make very clear the hostility of the DPR to any serious manifestations of regional particularism in the devolved legislatures.

The first of these is article 8 of the law, which, as we have seen, imposes exceedingly arduous conditions on any party seeking to run candidates. Those requirements pertain to proof that every such party has a completely national presence, evidenced by branches in all provinces, in three-quarters of all districts and half of all subdistricts in each province, as well as large numbers of party members widely distributed across the regions. How could a party representing the interests of Papuans or Dayaks or Balinese, in their respective regions, or a small Christian party such as PDS, with its strong following in a few heavily Christian areas, or the PBB, with its localized Masjumi following, or, for that matter, any party peacefully espousing any distinctive regional concerns, meet these requirements? It is most unlikely that it could, and that is the intention of the DPR.

[115] The same sort of pro-incumbent bias was visible in the earlier-enacted law on electoral management bodies. Membership in the electoral commission had previously required that any party-affiliated persons seeking appointment have resigned their party membership at least five years before assuming office. The new law, however, required that such candidates for appointment have resigned their party membership only by the date of their appointment. Law no. 15 of 2011 on Election Management Bodies, arts. 11(j), 85. This was a transparent attempt by the parties in the DPR to infiltrate the electoral management bodies, which the Constitutional Court promptly struck down as a violation of article 22E(5) of the constitution, requiring an electoral commission to be independent. Putusan No. 81/PUU-IX/2011 (Mahkamah Konstitusi).

[116] Law no. 8 of 2012, art. 216.

To be sure, article 8(1) exempts parties currently holding seats in a DPRD from meeting these requirements. If, however, that exemption is held to be unconstitutionally discriminatory, all such parties will need to meet the new requirements afresh. Most small regional parties, no matter how popular they are locally, will likely be unable to do so. By contrast, small parties in the DPR, with more widely distributed support, may be able to meet the requirements if, after the Constitutional Court decision, they need to do so.

Even if small regional parties already holding seats in the DPRDs or those attempting to win seats in a DPRD were able to meet the requirements of article 8, another major innovation of the 2012 law is likely to defeat their efforts to run candidates – and, indeed, to kill them altogether. For the first time, the new electoral law makes the national threshold of 3.5 percent applicable to the regional councils,[117] so that a party cannot take its properly elected seats on a DPRD unless it also manages to clear the national threshold. Before the 2012 law, several small parties with localized bases held considerable numbers of seats on regional councils (and some *bupati* positions), even after the 2.5 percent threshold eliminated the seats they had won in the DPR. Under the new law, subjected to an even higher threshold they could not clear, they would also lose seats they might win in regional elections.

This draconian disqualification would apply even to those parties that are sufficiently well organized to comply with the requirements of the political parties and electoral laws that they have the requisite number of branches and members all over the country. The applicability of the national threshold to DPRD elections is a serious blow to the representative character of regional governments. At local levels, Indonesia is a very heterogeneous country, and the inability of parties representing locally strong ethnic or religious groups to take seats they have won denies voters representation by the party of their choice. Regional elections in Indonesia have been quite successful in reflecting local political tastes, fostering coalitions among disparate parties active at the regional level, and even helping to compose differences after a history of intergroup violence in an area. It is not merely large-party bias that is reflected in the applicability of a national threshold to regional council elections, though it surely is that. The provision applying the threshold to regional elections also reflects the profoundly weak commitment of politicians in Jakarta to the devolution arrangements to which the Indonesian state is formally committed – not to

[117] Ibid., arts. 208, 209.

mention their desire to capture more of the patronage possibilities in the regions.[118] What many political leaders of the three large parties want is a system of a few national parties, whether or not such a system is consistent with the regional autonomy – and, in Aceh and Papua, special autonomy – that has constitutional status.[119]

The DPR considered two other important provisions relating to regional elections. In a draft law on the election of district heads,[120] the DPR proposed changing the requirements for nomination and the standards for avoiding runoffs. As we have seen earlier in this chapter, previously a party or coalition required 15 percent of the seats held in the DPRD or 15 percent of the votes cast in the DPRD election in order to nominate a ticket in an election for *bupati* or *wali kota* (and deputy). The new law would raise both of these requirements to 20 percent.[121] Similarly, it would raise from 25 to 30 percent of votes cast the quota required for a district head to win election on a single round, failing which there would need to be a runoff.[122] These changes could be seen as modest evidence of large-party bias or, equally, as evidence of the desire to reduce slightly the average number of contending tickets and to require that winners have more convincing margins of victory.

Of course, if all small regional parties no longer hold seats in the DPRDs, as the 2012 electoral law contemplates, then raising nominating requirements would cause no problems. The national parties will have a larger share of DPRD votes and seats and would easily meet the new requirements.

[118] A significant number of DRP members have returned to their home regions in order to become *bupatis*, because regional heads have control over money allocated to the regions. F.N. 3: 75.

[119] Article 18(2) of the constitution provides that regional governments shall "manage their own affairs according to the principles of regional autonomy," while article 18A(1) states that "the division of powers between the central government" and the regional government "shall be regulated by law, having regard for regional peculiarities and diversity." Article 18(5) guarantees regional governments "wide-ranging autonomy," except in fields reserved to the central government.

The implications of the new threshold requirement were picked up immediately in the regions. Among the first to protest was, significantly, a Balinese member of the DPD who urged other DPD members to join in seeking judicial review. As he saw it, the new requirements contravened constitutional provisions for regional autonomy. *Jakarta Post*, April 14, 2012. He was scarcely alone. Among others, some 22 small parties filed a petition in the Constitutional Court to test the law.

[120] Draft Law no. __ of 2012 on the Election of District Heads.

[121] Ibid., art. 71(2).

[122] Ibid., art. 126(4).

As mentioned earlier, there were similar debates in the DPR about nominating requirements for president and vice president. Although new nominating requirements could make it harder to field tickets, nothing the DPR might do in revising presidential or district-head nominating requirements is likely to approach the importance of changes in relations between the center and the regions wrought by the 2012 electoral law requirements. They truly raise serious questions about the integrity of the regional autonomy scheme adopted with such enthusiasm at the dawn of the democratic period.

One might well ask why small parties in the DPR were treated so generously in the 2012 electoral law after months of apprehension that they might suffer serious competitive disabilities in future elections. One reason is that the large parties were divided as the crucial votes approached, and small parties held the balance of power on some issues. Given the difficulties that PDI-P and Golkar both experienced in nominating presidential candidates in 2009, it might also have been anticipated that small parties could again have some utility in constructing presidential tickets in 2014. Neither of these reasons, of course, applied to the small, regionally based parties, which were unrepresented in the DPR and so were appropriate candidates for the chopping block, rivals as they were of large and small parties alike as they competed in the DPRD elections.

Notwithstanding the 2012 electoral law, the impulse to reduce the number of parties in the DPR was alive and well in the three largest parties. Two previous efforts to reduce the number of parties in Indonesia – one by Sukarno and another by Suharto – had aided authoritarianism. Future attempts to reduce the number of parties might not have such a result, but they might have other unfortunate consequences. If the methods employed were a raised threshold and a reduced average number of seats per DPR constituency, electoral results could become grossly disproportional in smaller constituencies with multiple contenders. Multiple small parties with many votes among them might win few or no DPR seats, and the votes of many millions of voters would elect no one, perhaps impairing the legitimacy of some election results.

Measures to reduce the number of parties in the DPR would also produce a great reduction in the multipolarity that has been so beneficial for Indonesia's democratic development. With a simplified party system, with three or four parties in the DPR rather than the nine that were represented in 2009, electoral choice within cultural streams would be greatly reduced and so might the incentives to form alliances across streams as individual parties approached a majority of seats. A party

system with a small number of parties in Indonesia's conditions risks alignment along, rather than across, the most prominent lines of division in the society. Polarizing issues around religion could become difficult to compromise. Indonesia's multipolar fluidity is a benign condition the DPR's larger participants seem inadvertently bent on altering in favor of a dangerous majoritarianism in a plural society.

That the large parties could do this 13 years after the first post-Suharto parties and electoral laws were enacted was scarcely remarked upon in Indonesia. Segments of the public were certainly cynical about the manipulative goals of the specific 2012 changes, but virtually no one asked about a practice that had become recurrent in Indonesia: the DPR's drafting of new laws for each election. Yet this is far from standard practice in democracies around the world, which tend to have relatively stable laws from election to election. Indonesia would certainly benefit from having in place organic laws on political parties and elections that could be changed only by supermajorities. If Indonesia were to produce such laws, they would need to be supported by a very broad consensus of the kind that was achieved in the process of reconstructing the constitution. If they were so supported, such laws would undermine the cynicism so visible every time the large parties and the small parties do battle before the next round of elections. Other countries have gone this route in order to impart predictability to the rules of the game and prevent them from alteration by whatever parties happened to enjoy a momentary majority. The sense that Indonesia will not be a normal democracy until it has a small number of wholly national parties – which dovetails perfectly with the desire of the large parties to produce a legislative oligopoly – animates perennial tinkering with statutes that ought, by the time of the fourth post-Suharto elections, to have been rather well entrenched. In contrast to some political leaders, the electorate had by then expressed its wish repeatedly in favor of a multiparty system and also, to some degree, in favor of local parties to handle local problems. In this the voters were at odds with many in the DPR.

7

Low-Quality Democracy and Its Discontents

By the time of the 2009 elections or earlier, most close observers believed Indonesian democracy to be consolidated.[1] By then, it seemed clear that no significant group in the country threatened the democratic order.[2] Yet there was a price to be paid for gradualism in the creation of a constitutional democracy. The post-1998 changes did not entail complete uprooting of the personnel or the practices of the previous regime. And so there was unfinished business with respect to the armed forces, corruption, the rule of law, and ethnic and religious tolerance. As I shall point out after a review of these deficiencies, some of them have connections to fundamental aspects of the new political system. Their amelioration could actually alter the shape of that system.

THE QUALITY-OF-DEMOCRACY ISSUE

Within a few years of the democratic transition, it had become customary to refer to Indonesia as a low-quality democracy.[3] The bill of particulars

[1] Here I elide the extensive literature on democratic consolidation. For a small taste, see Juan J. Linz and Alfred Stepan, *Problems of Democratic Transition and Consolidation* (Baltimore: Johns Hopkins University Press, 1996); Andreas Schedler, "What Is Democratic Consolidation?" *Journal of Democracy*, vol. 9, no. 2 (April 1998), pp. 91–107; Guillermo O'Donnell, "Illusions about Consolidation," ibid., vol. 7, no. 2 (April 1996), pp. 34–51.

[2] R. William Liddle and Saiful Mujani, "Indonesian Democracy: From Transition to Consolidation," in Alfred Stepan and Mirjam Kunkler, eds., *Indonesian Democratization and Islam* (forthcoming, New York: Columbia University Press, 2013), MS p. 27.

[3] See, e.g., Jamie S. Davidson, *From Rebellion to Riot: Collective Violence in Indonesian Borneo* (Madison: University of Wisconsin Press, 2008), p. 209; Larry Diamond, *The Spirit of Democracy* (New York: Times Books, 2008), p. 220 ("a troubled democracy").

for this indictment was far-reaching. Indonesia had "an extremely weak rule of law"; a surfeit of corruption and a lack of transparency; local elites that thwarted the rights of ethnic minorities in various regions; grave defects in religious liberty and the oppression of certain religious minorities, in violation of the constitution; military leaders who openly condoned the army's murder of a nonviolent separatist; human rights violations by the armed forces that were habitually unpunished; legislators willing to accept bribes in exchange for their support of legislation; gangsters occasionally able to win local office, with help from voter intimidation by thugs, some of them affiliated with political parties; restricted access of citizens to the political process; and generally "weak popular participation" – to name just a few commonly cited defects.[4]

To be sure, there was also acknowledgment of improvements. Larry Diamond was impressed with the government's ability to cope with natural disasters and suggested it had "a decent chance to sustain its nascent institutions with the aid of gradual reforms."[5] Mass media outlets and nongovernmental organizations grew in number and importance. Human rights abuses by the army in East Timor were acknowledged for the first time by the Indonesian president in 2008.[6] A building boom in large, conspicuous Christian places of worship took place in the face of repeated mob attacks on churches.[7] Trade unions, peasant federations, indigenous peoples' organizations, and *adat* associations all proliferated and

[4] See, respectively, Diamond, *The Spirit of Democracy*, p. 220; Davidson, *From Rebellion to Riots*, p. 210; Alfitri, "Religious Liberty in Indonesia and the Rights of 'Deviant' Sects," *Asian Journal of Comparative Law*, vol. 3, no. 1, art. 3 (2008), pp. 1–27; Greg Barton, "Indonesia's Year of Living Normally," in Daljit Singh and Tin Maung Than, eds., *Southeast Asian Affairs 2008* (Singapore: Institute of Southeast Asian Studies, 2009), pp. 135–36; Angus McIntyre, *The Indonesian Presidency: The Shift from Personal Toward Constitutional Rule* (Lanham, MD: Rowman & Littlefield, 2005), p. 246; Freedom House, *Freedom in the World 2008* (New York: Freedom House, 2009), pp. 326–25; Patrick Ziegenhain, *The Indonesian Parliament and Democratization* (Singapore: Institute of Southeast Asian Studies, 2008), pp. 166–67; Vedi R. Hadiz, "Power and Politics in North Sumatra: The Uncompleted *Reformasi*," in Edward Aspinall and Greg Fealy, eds., *Local Power and Politics in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2003), pp. 119–31, at pp. 126–29; Olle Törnquist, "Indonesia's Held-Back Democracy and Beyond," in Willy Purna Samadhi and Nicholas Warouw, eds., *Democracy-Building on the Sand: Advances and Setbacks in Indonesia* (Jakarta: Demos, 2008), pp. 1–17, at p. 10.

[5] Diamond, *The Spirit of Democracy*, p. 220.

[6] *South China Morning Post* (Hong Kong), July 16, 2008.

[7] See the *Wall Street Journal*, September 4, 2008. But the attacks persisted.

demanded participation in local politics.[8] In World Bank surveys, Indonesia's governance score, while still low, improved in the decade following the end of Suharto's regime; there were notable positive changes in the Bank's index of "voice and accountability" and more modest changes in the control of corruption, though little change in the poorly rated rule of law.[9] In SBY's first term, corruption was prosecuted more vigorously than before. Even an in-law of the president was charged in 2009; and, in his second cabinet reshuffle, two years earlier, SBY had dropped two ministers who had come under suspicion of corruption. Surveys showed strong support for the idea of democracy, majorities of respondents exhibited satisfaction with Indonesian democracy; and very strong majorities perceived greater opportunities for freedom of speech and association than had been available under the former regime, but, increasingly, surveys revealed dissatisfaction with government performance.[10]

This mixed picture raises an important issue: to what extent are some attributes of fully democratic regimes constituent elements of democracy at the outset, and to what extent are they consequences of democracy? This is not merely a matter of definitions of democracy, although, as we shall see momentarily, it is that, too.

Put the point this way. In some countries, most notably early modern England, the rule of law grew up more or less in tandem with the growing sense of constraint upon royal authority, and an independent judiciary preceded the full enfranchisement of the adult male population. But there is no reason to think that such a sequence is inevitable, that because when England had a democracy it also had the rule of law, the two necessarily, or even generally, develop simultaneously. With many contemporary transitions to democracy, the rule of law may follow, rather than accompany, the end of authoritarian rule.

With the armed forces, corruption, and religious tolerance in Indonesia, there are specific reasons for delayed development. As noted earlier, a

[8] Hans Antlöv, "Not Enough Politics! Power, Participation and the New Democratic Polity in Indonesia," in Aspinall and Fealy, eds., *Local Power and Politics in Indonesia*, pp. 72–86, at p. 84.

[9] Daniel Kaufmann et al., *Governance Matters VIII: Aggregate and Individual Governance Indicators, 1996–2007* (Washington, DC: World Bank, 2008), pp. 16, 33, 80, 83, 86, 92, 95.

[10] Barton, "Indonesia's Year of Living Normally," p. 137; Liddle and Mujani, "Indonesian Democracy," unpublished manuscript, p. 16; Marcus Mietzner, "Indonesia's Democratic Stagnation: Anti-Reformist Elites and Resilient Civil Society," *Democratization*, vol. 19, no. 2 (April 2012), pp. 209–29, at p. 216.

single-shot, early transformation of the political position of the armed forces would have been problematic, possibly even fatal, for military acceptance of the transition. Likewise, a regime as corrupt as Suharto's could scarcely have been purged of its corruption rapidly by means that comported with anything like judicial proof and due process, even if the Indonesian courts had been uniformly committed to those virtues. In any case, once politicians associated with Suharto's New Order were permitted to take the DPR seats they won in generally free and fair elections in 1999, it was certain that obstacles would be placed in the path of prolific criminal prosecution. So gradualism in the eradication of corruption was inherent in the program of insider participation in gradual constitutional and political change. And, finally, high levels of tolerance for minorities is usually a hard slog and is rarely high on the agenda of most democratically elected politicians. To understand that some changes come more slowly than others is not to excuse Indonesia's significant shortcomings but simply to recognize that some aspects of democracy will really be *benefits* of democracy, rather than *attributes* of it.[11]

AN INCOMPLETE AGENDA: CONTROLLING THE ARMED FORCES

A military that attacks its own citizens with impunity, as the Indonesian military did in East Timor, Aceh, Papua, and even on the streets of Jakarta,[12] is a major indicator of unfinished democratic business. So is a military with its own sources of off-budget, unaccountable funding, with the ability to extort protection money from businesses, and with exemption from ordinary criminal jurisdiction for nonmilitary crimes of its personnel and even from some customary forms of civilian control.

[11] For recognition of these problems, see Larry Diamond and Leonardo Morlino, "Introduction," in Diamond and Morlino, eds., *Assessing the Quality of Democracy* (Baltimore: Johns Hopkins University Press, 2005), pp. ix–xliii. Compare Samadhi and Asgart, "A Decade of *Reformasi*," in Samadhi and Warouw, eds., *Democracy Building on the Sand*, who concede that the democratic framework is working well, and whose expert surveys report a 97-percent positive change on instruments related to governance, but who then conclude that this "progress does not, in itself, improve the expression of democracy in a real sense."

[12] Among the most egregious cases were the assaults and rapes instigated by soldiers against Chinese victims in May 1998. A dozen years later, no one had been arrested. For more than a decade, the United States government refused to train the Kopassus special forces unit implicated in human rights abuses.

Although this description would be, by itself, an imperfect picture of the Indonesian armed forces, which have come a long way from the powerful position they occupied in the late Suharto period, it is not a wholly inaccurate one either. As late as 2009, there were still unexplained violent acts in Aceh, still some human rights abuses in the interior of Papua, and still no accountability for the violence inflicted in East Timor before and after its independence referendum of 1999. Ordered by law to surrender its business interests by 2009,[13] the army still maintained a substantial number of them after the deadline,[14] and its territorial units were able to profit from decentralization in various ways, lawful and unlawful. With direct participation in post-Suharto cabinets and heavy representation in Ministry of Defense positions that in most democratic countries would be held by civilians, the armed forces could thwart control by a civilian minister and sometimes prevent legislation that might render them or service personnel accountable to civilian authorities.

Beginning in 1998, civilian governments instituted a series of reforms to alter the status and power of the armed forces. Some changes were major, and some were modest, but together the reforms altered the balance of civilian and military authority decidedly to the advantage of the former. The armed forces are no longer a threat to civilian rule, no longer even in a position to demand partnership with civilians in politics. If we ask why a military so threatened by reform accepted most of those changes, resisting only a few, the explanation may shed light on the prospects for more perfect civilian control.

Almost everything conspired to produce military acquiescence to reform of the political position of the armed forces in the early post-Suharto period, not to mention democratic reform of the overall political system. The military was discredited by its reckless use of force against enemies of the former regime, and senior officers had begun to think, even before 1998, that Suharto had used and abused it as his political

[13] Law no. 34 of 2004 on the Indonesian National Armed Forces, art. 76.

[14] The armed forces missed the October 2009 deadline, at which point the president issued a decree, no. 43 of 2009, ordering transfer of businesses to the Ministry of Defense, rather than their sale to the private sector. The Ministry of Defense contains a very large number of military officers occupying key positions. A Business Supervision and Transformation Team had been working to identify and facilitate the transfer of military businesses but had great difficulty locating all of them. There were, it was said, "invisible businesses," and in any case the armed forces were to be left in charge of some residual share of small or informal enterprises after the decree was put in force. Again, gradual change was the watchword. See *Jakarta Globe*, October 14, 2009; October 15, 2009; *Jakarta Post*, October 15, 2009; *Wall Street Journal*, October 17, 2009.

instrument, perhaps most notably when the armed forces were employed to break up a gathering of Megawati's party in 1996. Conspicuous involvement in partisan politics had some notable disadvantages. Senior officers were also divided on the issue of military reform. There was a constituency within the military favoring its fundamental reform in an apolitical direction, just as there was for strong resistance to reform, but the top command in 1998–2000 was in the middle, willing to accommodate the first steps toward a more limited role for the military.[15]

An alternative cleavage line revolved around differences between secular-nationalist and Muslim officers. If the forces did not comply with and assist civilian politicians then ascendant, even worse dangers were, it seemed to nationalist officers, waiting in the wings, in the form of Islamic parties that might impair the secular state to which those officers were committed. In any event, the reforms were incremental. No single measure would deal a death blow to what was left of military power or prestige, certainly no measure worthy of a fight to the finish. Confronted with "salami tactics"[16] – one slice at a time – the military began to think of its core interests, and these, at least, seemed to be preserved as the civilians chipped away at lesser powers.

Furthermore, the new democratic system provided opportunities for officers to join in as civilian politicians when they retired from the forces. This prospect affected even the armed forces commander, General Wiranto, and while it stood in sharp contrast to the impulse to withdraw from partisan struggles, it produced the same temporizing result. Tooth-and-nail resistance to reform would jeopardize promising political futures.

Finally, as the civilian regime became stronger, its moral authority with the public grew, making resistance harder, its outcome less doubtful. From 2004 on, the president himself was a retired general, who could deal with the army in a more assured, expert way than his predecessors could. These conditions – the internal state of the forces when the first moves were made, their own doubts about the continuation of the status quo, uncertainty about lurking dangers if they resisted, the slowly phased nature of the changes, the ambitions of some officers, and the growing strength of the civilian regime – all counseled against rejection of military reform.

[15] Although senior officers continued to think they had invaluable knowledge about how to run the country and could supervise civilian politicians if they misbehave. F.N. 1:79–82.

[16] Thomas C. Schelling, *Arms and Influence* (New Haven: Yale University Press, 1966), pp. 66, 68, 77.

Still, a complete transformation was a long time in coming. The easier reforms were done first, the harder put off. As issues shifted to matters closer to the core of military interests, evasive techniques and even non-compliance grew. There are two sides to civil-military relations. On the one hand, there is the possibility of military intervention in civilian politics, which thwarts a democratic dispensation. In Indonesia, when the rules of the democratic game became more or less stable, there was no longer any room for those still in uniform to play a part. The civilians occupied the field. Although retired officers could join in, the boundary between the two domains became much firmer. On the other hand, there is an issue concerning the depth of civilian management of military affairs. The Indonesian armed forces have long claimed a very broad sphere of autonomy. On this, long after the end of Suharto's New Order, some significant parts of the task of civilian control remained undone. The military's offensive capacities in the political system, so to speak, were abandoned, but its defensive capacities vis-à-vis its corporate prerogatives were not, as a quick review of the changes demonstrates.[17]

With the fall of Suharto, the armed forces of Indonesia were down, but they were not out. They had gained their initial political position by virtue of the part they had played in fighting the Dutch and then by fighting regional separatists. They had become important to Sukarno's scheme of balancing contending political forces, and their position had been enhanced by Suharto, whose regime, while not strictly military, had placed serving and retired officers in key positions at all governmental levels. In Suharto's last years, however, a number of officers had begun to think about a new, more limited and professional role for the armed forces. In the closing months of Suharto's regime, the reputation of the army and the police had been damaged by their involvement in kidnappings and killings in Jakarta. The shooting of students at Trisakti University, apparently by police (who were then still part of the armed forces), on May 12, 1998, produced mass protests, followed by street violence in which shopping centers were burned and Chinese (and others) were attacked and raped.

[17] Although the interpretation is my own, much of the material in the next several pages draws on three outstanding works on civil-military relations in post-Suharto Indonesia: Harold Crouch, *Political Reform in Indonesia after Soeharto* (Singapore: Institute of Southeast Asian Studies, 2010), pp. 127–90; Marcus Mietzner, *Military Politics, Islam, and the State in Indonesia: From Turbulent Transition to Democratic Consolidation* (Singapore: Institute of Southeast Asian Studies, 2009); Jun Honna, *Military Politics and Democratization in Indonesia* (London: Routledge Curzon, 2003).

Within a week, Suharto had resigned and the armed forces had to cope with the stigma of their involvement in the violence.

The matter had been made worse by rivalry between the armed forces commander, Wiranto, and another senior officer, Suharto's son-in-law, Lt. Gen. Prabowo Subianto, who appeared to have been involved in kidnappings of activists and possibly other acts of mass violence during Suharto's last days in power. Wiranto had urged dialogue with the opposition and had sent officers, notably the future president, Yudhoyono, to talk to students who were agitating for Suharto's resignation. Prabowo, on the other hand, had advised Suharto to fire Wiranto and declare a state of emergency. On May 20, Wiranto suggested that Suharto resign. By then, others had already suggested the same course, which Suharto followed the next day, opening the way for Wiranto to dismiss Prabowo from his special forces command and to purge his followers in the armed forces.

From this well-known account,[18] several things become clear. The armed forces were far from united. Reformers, including SBY, were waiting in the wings for their chance at internal change, and relative (if not always reliable) moderates, such as Wiranto, had temporarily gained the upper hand, having also committed themselves to a civilian transition. But, in spite of the reputational damage of the preceding weeks, many commanders were uneasy with the new civilian regime, headed by Habibie, whom they distrusted for his association with modernist Muslim forces in the Islamic organization he had headed during the 1990s. Yet, with a mobilized, angry public that would have made any bold military moves costly, and with demoralization and disunity readily apparent, the armed forces were in no position to challenge the civilians.

The result was compliance with Habibie's first line of reforms, including reforms of the armed forces. In early 1999, some 4,000 officers holding civilian positions were removed; continuation in those positions would require their retirement from active service. Then the police were separated from the army. Armed forces representation in the legislature was cut in half, as we have seen, and eventually eliminated. Hard-line officers were disfavored, reformers embraced. When Habibie opened the political system to parties of all types (except communists), the armed forces resisted the formation of Islamic parties, but Habibie got his way. When Islamic

[18] See Honna, *Military Politics and Democratization in Indonesia*, pp. 159–62; Marcus Mietzner, "From Soeharto to Habibie: The Indonesian Armed Forces and Political Islam during the Transition," in Geoff Forrester, ed., *Post-Soeharto Indonesia: Renewal or Chaos* (New York: St. Martin's Press, 1999), pp. 65–102, at pp. 75–83.

parties then formed, the military began to think that even Habibie, a Golkar man, was preferable. Wiranto reshuffled commands to disfavor officers with conspicuous Muslim affiliations (especially to ICMI, Habibie's Muslim organization) as well as those with sympathies to Prabowo. Eventually, Wiranto was even induced to support Habibie's preferred candidate for the chairmanship of Golkar against a candidate more favorable to the armed forces. Wiranto also appeared to help organize Muslim vigilante "security groups" in November 1998 to fight against anti-Habibie demonstrators who had gathered en masse in Jakarta.

Already, then, the armed forces were generally reacting cautiously to reduction of their prerogatives, but they were also proving to be valuable to leading politicians, and they began to see that they were not altogether without influence in the new regime. Wiranto's own political aspirations thrust him further into elite conflicts when he threw the armed forces' 38 votes in the MPR against approval of Habibie's accountability speech, helping to kill Habibie's career. He later supported the candidacy of Abdurrahman Wahid for president, becoming a cabinet minister following Gus Dur's selection. In the first stages of the new regime, the armed forces had good reasons to accept a democracy in which they could play a part, sometimes prominently, and to accept modest reforms of their own role.

The reduction of the political role of the armed forces in subsequent years proceeded in the same incremental way. When civilian politicians were badly divided, as Marcus Mietzner has argued,[19] the armed forces were able to resist reform, and their support was sometimes available to one civilian faction or another. At those times, military reformers were thrust aside, but divisions in the commanding ranks remained, with some officers eager to limit the military mission, others equally eager to repress with some brutality the regional disorder that grew up in the first years after Suharto's fall. When civilian politicians were united, reforms resumed, and military reformers returned to prominence. Still, some officers, nostalgic for a Suhartoist revival, awaited a chance to reverse the constitutional changes that were under way. Their numbers and influence declined within a few years of Suharto's fall.

The period of Abdurraham Wahid's turbulent presidency began with a strong surge toward military reform. By 2000, the armed forces doctrine of *dwi fungsi*, or two functions, civil and military, long a staple of Suharto's regime but no longer indisputably legitimate among officers, was abolished. The new president removed Wiranto from his cabinet for alleged

[19] Mietzner, *Military Politics, Islam, and the State in Indonesia*, pp. 365–66.

involvement in violence in East Timor. Wiranto's supporters in the armed forces reacted but were purged. Strong advocates of military reform were appointed to key posts, and reform was encouraged. But then Gus Dur's conflicts with the legislature put him in a difficult position and induced him to cultivate military support, which he did by dismissing the reformers. In the president's showdown with the MPR, the new commanders nevertheless refused to support his desire to declare an emergency and dissolve the legislature. Even as they asserted their power to disobey, the leaders of the armed forces ironically acknowledged the supremacy of the civilian constitutional process.

Megawati was far more cautious in her treatment of the military. The dominant officers were generally opposed to reform, but the internal military reformers continued to work on reforms. Megawati was, however, strongly opposed to one bit of dangerous military meddling, which had grown as the army began to defy Gus Dur: covert military support for Laskar Jihad, a virulent paramilitary that had intervened on behalf of Muslims fighting Christians in Maluku and elsewhere.[20] In 2002, Laskar Jihad's leader was finally arrested, and the organization was dissolved later in the year. As ethnic violence was put out in Maluku, Central Sulawesi, and West Kalimantan, the army's justification for continued involvement in domestic politics declined.[21]

The last gasp of military reaction to democratization was a proposal by the army commander, General Endriartono Sutarto, in 2002, just before the Fourth Amendment was adopted, for the MPR to consider reversion to the unamended 1945 constitution. Armed forces members of the MPR and many from PDI-P were supportive of the proposal, but it was bound to fail and was ultimately withdrawn.[22] Even from a momentary position of strength in the executive, military hardliners could not find the right opportunity to reverse any of the changes. The civilians were in charge.

Yet the military's value to civilian governments and some of its prerogatives remained. When Megawati resumed a particularly vigorous and

[20] See Noorhaidi Hasan, "Faith and Politics: The Rise of the Laskar Jihad in the Era of Transition in Indonesia," *Indonesia*, no. 73 (April 2002), pp. 145–69.

[21] It was, however, revived somewhat by the need for antiterrorist action that followed the attacks in New York on September 11, 2001, as well as the Bali bombing of October 2002 and the Australian embassy bombing of September 2004.

[22] For accounts of this episode, see Patrick Ziegenhain, *The Indonesian Parliament and Democratization* (Singapore: Institute of Southeast Asian Studies, 2008), p. 157; Andrew Ellis, "Indonesia's Constitutional Change Reviewed," in Ross H. McLeod and Andrew MacIntyre, eds., *Indonesia: Democracy and the Promise of Good Governance* (Singapore: Institute of Southeast Asian Studies, 2007), pp. 19–40, at p. 30.

brutal military campaign against separatists in Aceh, the armed forces purchased, at least for a time, a certain lack of scrutiny from civilian institutions of what it considered its remaining core areas: military businesses, the territorial system, autonomy over military policy, and immunity from prosecution for prior unlawful behavior. A 2004 statute on the military gave it five years to terminate its businesses, but left the armed forces under the direct control of the president and permitted officers to hold civilian positions if they concerned military affairs.[23] The army's territorial command, which made it possible for it to insert itself into civilian life at the local level, was left intact.[24]

Military businesses were always a way of making up the difference between the armed forces' budget and the lesser government expenditures allocated to them. For its part, the military responded to the 2004 law by selling some enterprises to legitimate businesses and retaining the proceeds. Others it owned through numerous foundations and cooperatives that, senior officers asserted, were exempt from the requirements of the law. Together with the territorial system and the local army presence it provided, military businesses allowed the army to engage in an array of illicit activities,[25] most notably, perhaps, lucrative protection rackets.

Revenues from military businesses appear to have declined after 1998. Nevertheless, parts of the armed forces remained entangled in unsavory enterprises, from drug running across the border into East Timor and Papua New Guinea to illegal logging and protection of illegal miners in Indonesian Papua.[26] The worst abuses are on the periphery.

The vitality of the territorial commands was restored, as Mietzner has pointed out,[27] by the need for domestic intelligence gathering that

[23] Law no. 34 of 2004 on the Indonesian National Armed Forces, arts. 76, 3(1), and 47, respectively.

[24] Indeed, the armed forces are said to have a duty to assist local government, a duty conducive to their involvement in the affairs of devolved regional administrations. See Leonard C. Sebastian and Iisgindarsah, "Assessing 12-Year Military Reform in Indonesia: Major Strategic Gaps for the Next Stage of Reform," RSIS Working Paper no. 227, Singapore, April 6, 2011, p. 13.

[25] See "Indonesia: Reform of Military Businesses: A Human Rights Watch Background Briefing," February 16, 2007.

[26] *The Australian* (Sydney), December 28, 2010; *The Age* (Melbourne), December 23, 2010.

[27] Marcus Mietzner, "The Politics of Military Reform in Post-Suharto Indonesia: Elite Conflict, Nationalism, and Institutional Resistance," Washington, DC, East-West Center Policy Studies, no. 23, 2006, pp. 40–42.

followed a spate of terror attacks in 2002–04. For a time, at least, these events silenced internal military reformers. Enthusiasm for the territorial system was also supported by the isomorphism of local army units with devolved governmental units at provincial and district levels. The territorial system constitutes a parallel military administration. While retired officers lost many provincial and regional elections after 2004, active duty officers continued to have access to the enhanced budgets that accompanied decentralization. Fully elected regional authorities may ultimately undo the benefits to the military of the territorial system,[28] but in the short run the armed forces traded influence at the center for resources at the local level.

When Yudhoyono became president in 2004, he resumed reform, albeit at a modest pace. He reassigned a hardline commander of the armed forces who had been appointed by Megawati, and he removed other military extremists, replacing them with officers he trusted. He managed army resistance to a peace agreement in Aceh, and he was able to reduce the army's use of force in Papua. In his first term, a new statement of military doctrine was produced that affirmed the idea of civilian control and shifted some resources to the navy and air force to strengthen their logistical capacity after army transport was found wanting following the Sumatra tsunami of 2004. Control over military justice was transferred to the Supreme Court in 2005, and in 2008, prodded by a number of interest groups, the DPR was ready to pass a bill, resisted by the Ministry of Defense, that would have subjected military personnel to civilian jurisdiction for off-duty crimes. The bill eventually stalled because of government reluctance to entrust criminal investigations of the military to the police force. The stalemate left prosecution for crimes by military personnel against civilian victims in the military courts, sometimes producing exceedingly lenient treatment of offenders. Around the same time, a very senior retired army officer was put on trial for the 2004 murder of a human rights activist.[29]

[28] For this view, see Mietzner, *Military Politics, Islam, and the State in Indonesia*, p. 371.

[29] The officer was Muchdi Purwopranjono, accused of directing the killing of Munir Said Thalib. At the trial, a number of witnesses recanted earlier statements implicating Muchdi, and the court declined to admit a Ministry of Defense document that was relevant to the issue of motive. Muchdi was acquitted, but the acquittal was appealed to the Supreme Court. The appeal was unavailing. Perkara 423K/PID/2009 (Mahkamah Agung). For accounts, see Tim Lindsey and Jemma Parsons, "The One That Got Away? Muchdi's Murder Trial Starts Falling Apart," *Inside Indonesia*, no. 94 (October–December 2008), available at http://www.insideindonesia.org/edition-94/the-one-that-got-away; *Jakarta Globe*, January 23, 2009.

The incremental method got closer and closer to the remaining bastions of military authority without quite breaching them.[30]

Still, there was little interest in wholesale prosecution of previous army abuses and not much interest in confronting the embedded territorial system or evasions of the prohibition on business enterprises. The Ministry of Defense continued to be staffed principally by members of the armed forces, and the armed forces commander still reported directly to the president. Yet, in various roundabout ways, military autonomy was being eroded. A lawsuit in an American court alleged that Exxon Mobil's Indonesian unit had paid Indonesian forces in Aceh for security that had entailed murder and torture.[31] There was embarrassment for the military, if not always accountability.

The 2009 elections in Aceh were marred by episodes of violence, including bombings and political assassinations, often directed against politicians formerly associated with the main Acehnese rebel group. Some of the perpetrators may have been connected to political parties and factions, but certain army units were also suspected. There was continuing hostility, even hatred, between the army and the former rebels. Aceh was one area in which the armed forces felt that a strong hand, which only they could provide, was indispensable. Yet, in the end, they accepted election results that propelled former rebels into the governorship and many district-head offices.

If this account suggests great success in securing the military's acceptance of democracy but only limited success in pulling the military within the ambit of civilian control and accountability, perhaps a reminder of how deeply entrenched the military was at the outset is useful. The Indonesian army had a long history of self-sufficiency, cultivated in its early struggles. Its territorialization, too, went back fully 50 years. Its dual-function doctrines, developed under Suharto, put it at the center of political life. In some of its many internal disputes of the 1990s – a period of ideological ferment and factional tension in the armed forces – some officers saw the army as redressing deficiencies in the political system, and other proponents of a politically involved military could scarcely

[30] One important reform, with possible implications for relations of the armed forces with civilians and civilian institutions, was creation of a Disaster Relief Rapid Reaction Force. See Evan A. Laksmana, "Indonesia's National Defence Forces: Recent Strategic Changes and Implications," RSIS Commentaries, no. 101, 26 August 2010, Nanyang Technological University, Singapore.

[31] *Agence France Presse*, August 28, 2008.

divorce the forces from the various needs of Indonesian society.[32] While other officers offered far more abstemious assessments of the military's proper role, there is no blinking the long-standing sense of the army's political legitimacy felt by many in the officer corps – a sense reinforced by various functions of protection, security, and political mediation performed by the armed forces in the early post-Suharto period.[33]

The old ideology finally gave way to an acknowledgment that the political domain is to be a civilian affair. Even so, some methods of civilian control of the armed forces, such as removal of commanders and their replacement by those with views more congenial to those of political leaders, fell short of institutionalizing civilian control.[34] There also remained a certain admiration among citizens for at least some officers – witness the presence of a retired general on each of the three presidential–vice presidential tickets in 2009[35] – and not all of the underpinnings of military autonomy disappeared. Furthermore, there are countertrends: the promotion of the 2010 president's brother-in-law to three-star general rank, suggesting not just nepotism but potential future use of the army for political protection, and, perhaps even more serious, a surfeit of officers from military academy classes in the 1980s and early '90s who are just coming to the most senior ranks and who may, by dint of sheer numbers, require postings in civilian government positions.[36]

When the last vestiges of recurrent civil violence disappear, when civilians at all levels of government agree that they can dispense with the services offered by the armed forces, when the Indonesian periphery becomes more visible to the rest of the country, and when the armed forces can use all of its officers and feed all of its soldiers, the last vestiges of military autonomy will also disappear. Those days may be a long way off, and so Indonesia may be a tough case for complete civilian control, but not

[32] For a fine treatment of these military debates, see Honna, *Miliary Politics and Democratization in Indonesia*, pp. 88–144.

[33] See Marcus Mietzner, "Business as Usual? The Indonesian Armed Forces and Local Politics in the Post-Soeharto Era," in Apsinall and Fealy, eds., *Local Power and Politics in Indonesia*, pp. 245–58, at pp. 252–56.

[34] Compare Samuel P. Huntington, *The Soldier and the State* (New York: Random House, 1957).

[35] And the rather extreme nationalist campaign rhetoric of Megawati's running mate, Prabowo, with its Sukarnoist overtones.

[36] See the analysis of Iisgindarsah, "Leadership Renewal in TNI: Fragile Steps towards Professionalism," RSIS Commentaries, no. 2/2011, Singapore, January 6, 2011.

an impossible one. In the meantime, the threat to democratic politics from the armed forces appears minimal.[37]

THE CORRUPTION SURFEIT

Indonesia has habitually been named deficient in control of corruption. From 1998 to 2008, Indonesia moved from a score of 2.0 to 2.6 on Transparency International's Corruption Perception Index, improvement from a very low level that still left it below India, Thailand, and China.[38] In the World Bank's governance indicators, Indonesia made significant progress in corruption control, moving from –1.15 to –0.72 in the period from 1998 to 2007, but this put the country in the same range of scores for 2007 as Moldova, Nicaragua, the Philippines, Armenia, and Ethiopia – not exactly exalted company.[39] Moreover, Indonesia was characterized by a number of open and notorious corruption scandals: the rather obvious perversion of justice in the celebrated *Manulife* case of the early post-Suharto period, which produced extraordinary representations of the Canadian government to the Indonesian government and eventually a reversal of the judgment;[40] the persistence of illegal logging in Sumatra and elsewhere;[41] the alleged involvement of a chief justice of the Supreme Court, a former minister for law and human rights, and a former election commissioner in various corruption cases, none of them brought to a

[37] The scale devised by Daniel H. Levine and José E. Molina to measure the relative power of civil and military authorities ranges from military control of government to military tutelage (active participation and the capacity to intervene) to conditional military subordination (veto power and the right to intervene) to unfettered civilian control. See Levine and Molina, "Evaluating the Quality of Democracy in Latin America," in Levine and Molina, eds., *The Quality of Democracy in Latin America* (Boulder: Lynne Reinner, 2011), pp. 1–19. By these standards, Indonesia has done very well, but the standards are focused entirely on military intervention rather than on immunity from scrutiny.

[38] Transparency International, *Global Corruption Report* (New York: Cambridge University Press, 2008), p. 301. The scale ranges from 0 to 10, from high to low corruption.

[39] Kaufmann et al., *Governance Matters VII*, pp. 94–96.

[40] For an account, see David K. Linnan, "Commercial Law Enforcement in Indonesia: The Manulife Case," in Tim Lindsey, ed., *Indonesia: Law and Society* (2d ed.; Sydney: Federation Press, 2008), pp. 596–619.

[41] See Paul K. Gellert, "Reforming Governance in Indonesia's Timber Industries: How Domestic Politics Thwarts Neoliberal and NGO Transnational Networks," paper presented at the conference on New Directions in Southeast Asian Studies, University of North Carolina, Chapel Hill, October 10–11, 2008.

successful conclusion;[42] reports of DPR members who demanded payments to secure approval of legislation or immunity from legislative investigation and others who allegedly received payments to vote favorably on the confirmation of a senior central bank official;[43] a kickback scheme involving construction of a facility to host the Southeast Asian Games and bribery allegations involving election fraud at the General Election Commission.[44]

Sometimes the actions procured by bribes are brazen and blatant: falsifying the actual outcome of cases decided in the Supreme Court or deleting an entire section on tobacco as an addictive substance from a newly enacted health law.[45] Middlemen, capable of fixing problems with police, prosecutors, and judges, abound.[46] A particular provision, to be inserted in a draft law, has a certain cash value that can be realized by a well-placed legislator willing to ask a business how much the provision is worth and then to demand that amount.[47] And if direct payments are likely to be solicited in order to avert adverse action (or achieve beneficial action), indirect payments can be obtained to avert the need for multiple direct payments. Hence a legislator boasts of his appointment to the boards of several big companies to protect them from other legislators who would otherwise extort money from the companies by calling them to be investigated by the DPR on some pretext or other.[48] Even central government departments pay for legislation, and regional governments pay for the release of central government funds.[49] Officials at the Department of Religious Affairs who solemnize Muslim marriages demand bribes from newlyweds, for, as one said, "as long as everyone is

[42] See Stewart Fenwick, "Measuring Up? Indonesia's Anti-Corruption Commission and the New Corruption Agenda," in Lindsey, ed., *Indonesia*, pp. 406–29.

[43] Natasha Hamilton-Hart, "Government and Private Business: Rents, Representation and Collective Action," in McLeod and MacIntyre, eds., *Indonesia*, pp. 93–114, at pp. 110–11; *Jakarta Post*, October 15, 2009.

[44] *Jakarta Post*, October 11, 2011; October 4, 2011.

[45] On the former, see Sebastiaan Pompe, *The Indonesian Supreme Court: A Study of Institutional Collapse* (Ithaca: Cornell University Souteast Asia Program, 2005), pp. 278, 338–41; on the latter, see *Jakarta Globe*, October 14, 2009.

[46] See, e.g., *New York Times*, December 15, 2009.

[47] F.N. 3:85 (a PKS legislator).

[48] F.N. 3:84.

[49] See Crouch, *Political Reform in Indonesia after Suharto*, pp. 70–73. Government bodies, business firms, and societies have been known to pay DPR commission chairs for the approval of proposed legislation. William Case, "Executive Accountability in Southeast Asia: The Role of Legislatures in New Democracies and under Electoral Authoritarianism," East-West Center Policy Studies, no. 57, Honolulu, 2011, p. 27.

happy, the bride is happy and the guests are happy, the . . . officials should be happy too."[50]

Undoubtedly, the survival of officials from Suharto's New Order regime is responsible for the continuation of bribery and extortion.[51] Had there been a radical overthrow of the regime and a clean sweep of its personnel, old patronage networks and old habits might have been broken. But even post-1998 parties, such as SBY's Democrats, contain people who were active in the old regime – in Golkar, in the bureaucracy, in the military – some of whom have been implicated in graft cases. The important and increasing role of money in presidential campaigns, beginning in 2009, will make anticorruption efforts more difficult, for much of the corruption in Indonesia is not undertaken to enhance private welfare but to meet the needs of political parties and candidates. All parties require payments to survive.

Overall, corruption is dysfunctional for economic development because it induces misallocation of resources to areas in which bribery is more common.[52] The same is true in politics. For example, religious extremists could have their way in framing an antipornography bill, because political parties were not much interested in it: there was no money to be had.[53] And if bribery creates uncertainty about regulatory requirements, especially when multiple payments are needed, either to assure compliance with government obligations or to avert onerous impositions, then investment may decline, as it has in the Indonesian oil industry.

Corruption also facilitates the possibility of authoritarianism. To the extent that being in government provides a license to extort or to embezzle, then being out of government constitutes a competitive disadvantage. At the extreme, the magnetic attraction of government can create a vacuum of opposition – a theme to which we shall return in the next chapter. Suffice it to say for now that 22 of the 70 ministries and government agencies of the Indonesian central government have *yayasan* – foundations – affiliated with them, at least 46 of them in all, that utilize state assets and are often not audited by the government audit board. These are rich sources of party largess through the good offices of ministers who control them.

[50] *Jakarta Globe*, October 12, 2009.

[51] As Edward Aspinall has noted. "Indonesia: The Irony of Success," *Journal of Democracy*, vol. 21, no. 2 (April 2010), pp. 20–34, at p. 32.

[52] Andrei Shleifer and Robert W. Vishny, "Corruption," *Quarterly Journal of Economics*, vol. 108, no. 3 (August 1993), pp. 599–617.

[53] F.N. 3:85.

This much is clear: by itself, democracy is no guarantee against corruption.[54] Democratic elections can create a backlash against corrupt practices and induce politicians to attempt to reduce them, but they also create occasions for voters themselves to benefit from corrupt practices, including vote-buying and walking-around money. As we have seen, by dispersing authority, democracy can proliferate the points at which bribery is necessary, a defect noted by a regional government in Solo, which countered it by providing a single point at which businesses were enabled to obtain all permits for their activities.[55] Democracy alone does not guarantee the rule of law, effective control of the police, and protection of property. Although corruption levels generally decline with the level of democracy, at intermediate levels of democracy, as measured by Freedom House political rights and civil liberties scores, many countries retain high levels of corruption.[56]

The persistence of corruption in the face of democratic change suggests that multiple paths are required to prevent corruption. Indonesia leaned heavily on criminal prosecution to begin to eradicate corrupt practices. This course had its pitfalls, because the other props of corrupt practices were left standing. The instrumentalities that benefited from those practices were able to react, and rivals of the anticorruption crusaders could also mobilize.

After 1998, there was an effort begun to reform the judiciary, but its state was so deplorable that this would be a long haul. There were new organizations created with an anticorruption mission, and some cabinet ministers – notably Finance Minister Sri Mulyani Indrawati – who cleaned house in particular centers of unlawful activity. In 2009, there was also a president reelected on an anticorruption platform.

Undoubtedly, the most important innovation was the creation of the Corruption Eradication Commission (Komisi Pemberantasan Korupsi, hereinafter KPK) in 2003.[57] The commission's journey speaks volumes about the problems of rooting out embedded corrupt practices and relationships.

[54] See Yan Sun and Michael Johnston, "Does Democracy Check Corruption? Insights from China and India," *Comparative Politics*, vol. 42, no. 1 (October 2009), pp. 1–19.

[55] *Economist*, September 12, 2009, pp. 12–13.

[56] Phyllis Dininio, "Linkages between Corruption and Democracy," in Gary Bland and Cynthia J. Arnson, eds., *Democratic Deficits* (Washington, DC: Woodrow Wilson International Center for Scholars, 2009), pp. 149–50.

[57] Law no. 30 of 2002 on the Corruption Eradication Commission.

The commission was accorded a wide-ranging mandate to coordinate anticorruption efforts, to prevent corruption, to monitor government bodies, and, of course, to investigate and prosecute corruption. Its operative statute was designed to prevent deflection of prosecutions before trial – of which there had been recent examples – by requiring that a KPK investigation, once opened, proceed to prosecution.[58] Naturally enough, this led to great care in the cases selected for investigation by the KPK, with concomitant public suspicions about the commission's "partiality and consistency," as Stewart Fenwick's discerning analysis of the KPK puts it.[59]

The KPK had antecedents. The Netherlands has a group of special prosecutors with special investigatory powers in corruption cases. In 1955, Sukarno's cabinet agreed on an emergency decree to create separate anticorruption courts, but the president refused to sign it, and the matter died in parliament.[60]

The same statute that created the KPK also established a specialized Anti-Corruption Court, with a majority of ad hoc, rather than career, trial judges and similar majorities at the appellate and cassation stages.[61] Very tight deadlines were laid down for proceedings in the trial court, so that prosecutions could not be defeated by delay. The first few years of the KPK were marked by considerable success in prosecutions, even of prominent people, such as a former DPR member, who was imprisoned for eight years, and a senior prosecutor in the attorney general's office, also sentenced to eight years. There was, however, a certain resentment among career judges and the ordinary courts of the aggressiveness of the Anti-Corruption Court and its ad hoc judges.

The KPK record, however, was impressive. In its first six years, the KPK had prosecuted 115 cases, of which 91 had reached final adjudication in the special Anti-Corruption Court. The KPK had won all of them.

In 2006, the Anti-Corruption Court suffered a setback at the hands of the Constitutional Court, which declared that article 53 of the law establishing the Anti-Corruption Court violated a provision of the Indonesian constitution.[62] That provision requires, as the Constitutional Court saw it,

[58] Ibid., art. 40.

[59] Stewart Fenwick, "Measuring Up?" p. 410. The KPK has also avoided the mandate of article 40 by using techniques of informal investigation.

[60] Herbert Feith, *The Decline of Constitutional Democracy in Indonesia* (Ithaca: Cornell University Press, 1962), pp. 438–39.

[61] Law no. 30 of 2002, arts. 53–54.

[62] Perkara 012-016-019/PUU-IV/2006 (Mahkamah Konstitusi).

specialized courts to be set up by a separate statute, rather than established in a statute regulating other matters.[63] The Constitutional Court, however, stayed the effect of its decision for three years, during which it was anticipated that the DPR would enact a separate statute for the Anti-Corruption Court.

The decision of the Constitutional Court was based on reasoning concerning the meaning of the words "law" and "a law," but the court's rather wooden linguistic treatment of the issue was underpinned by its concern that similar cases could produce different outcomes depending on whether they were handled in the ordinary courts or the Anti-Corruption Court. This concern would persist, however, even if the Anti-Corruption Court were created by its own separate statute, and in any event different (and better) outcomes were what the legislation was intended to accomplish. In some measure, disparate results are possible whenever two different panels of the same court hear a case. There are better methods for redressing this problem, by appellate supervision of the two sets of courts.

Not surprisingly, the first official reactions to the court's decision anticipated that there would be no separate court created, although there might be special anticorruption judges in the ordinary courts.[64] The first draft bills circulated in 2009 to replace the statute found defective by the Constitutional Court would have required that the police, rather than the KPK, investigate corruption allegations and would have precluded the KPK from prosecuting cases.[65] In addition to the fact that local prosecutors and police were often part of the corruption problem, they did not possess the specialized resources, such as forensic accounting and surveillance equipment, necessary for successful anticorruption work, and they lacked the élan, morally supportive atmosphere, and internal controls for integrity that the KPK had.[66]

The same was true for the ordinary courts. A study of 484 corruption cases appealed to the Indonesian Supreme Court between 2001 and 2008 revealed that fines imposed were light relative to amounts obtained illegally, that judges did not follow the schedule of punishments required by the Anti-Corruption Law, and that legislators received lighter sentences than other defendants guilty of similar crimes; they often received

[63] Constitution of Indonesia, as amended, art. 24A(5).

[64] Fenwick, "Measuring Up?" p. 418.

[65] For an analysis, see Jeremy Kingsley, "D-Day for Anti-Corruption Reform," *Inside Indonesia*, no. 96 (April–June 2009), available at http://www.insideindonesia.org/edition-96/d-day-for-anti-corruption-reform.

[66] See ibid.

probation and were unlikely to be ordered to pay compensation.[67] The laxity of the ordinary courts, compared to the diligence of the Anti-Corruption Court, was palpable.

While these issues were simmering in the DPR, efforts were afoot to discredit the KPK, which had targeted corruption in the police, wiretapped police generals, and prosecuted officials and legislators. In one case, a former high police officer was sentenced to prison for skimming funds while he was ambassador to Malaysia. Other government officials were also angry at the KPK and its perceived arrogance, and even SBY, one of whose in-laws had been convicted in a KPK prosecution, complained publicly that the commission seemed answerable to no one. Most importantly, most legislators in the DPR were unhappy with the KPK, whose only friends seemed to be in civil society organizations and in the Islamist PKS, which, although participating in all forms of government largess, had made clean government part of its program.[68]

The campaign against the KPK was linked to a controversy that arose in 2008, when, out of fear of contagion from a possible bank failure, the Ministry of Finance and the central bank ordered the bailout of Bank Century, a small bank at risk of having a run on its deposits. After the government infusion of funds, a few big depositors withdrew their money. Suspicions grew that the bailout, although undoubtedly influenced by fears of a banking crisis similar to that taking place in the West, had been intended to accommodate those large and influential depositors. Disbursements swelled to several times the amounts that had been authorized, and rumors circulated that some of the funds had found their way into the 2009 presidential campaign. A side story was the KPK's investigation into the alleged involvement of the police chief of the criminal investigation division in paying out Bank Century funds. It seems likely that this investigation was the event that triggered a major police campaign against the KPK.[69]

It did not help that the chairman of the KPK, Antasari Azhar, was arrested as a suspect in a murder investigation in mid-2009. The KPK

[67] Rimawan Pradiptyo, "A Certain Uncertainty: An Assessment of Court Decisions in Indonesia 2001–2008," Gadjah Mada University, Jogjakarta, n.d., available at http://ssrn.com/abstract=1480930.

[68] I am relying here on a series of interviews conducted in Jakarta during the period of the controversy surrounding the KPK in 2009. F.N. 3:54–59, 3:78–79, 3:82.

[69] That is the speculation of the well-informed Indonesian magazine *Tempo*, October 12, 2009.

chairman was later convicted of the crime. The victim had been a witness in a KPK case.

The campaign against the KPK then began in earnest. The head of the criminal investigation division who was under KPK investigation complained that the KPK had been tapping his phone, and there were reports that he had demanded a large bribe to facilitate withdrawal of a wealthy businessman's savings from Bank Century. The head of the criminal investigation division had the conspicuous support of the national police chief, even though the former had sent a text message threatening the KPK unless the commission ceased its investigation of the Bank Century case.[70]

Soon thereafter, SBY attempted to reconcile KPK officials, the police, and the attorney general, but by then bribery allegations had been leveled by the police at two KPK commissioners, who had also been accused, with little or no justification, of exceeding their authority by imposing travel bans on suspects in a bribery case. Once the police declared the two commissioners suspects, they were, by law, suspended from their KPK positions, leaving only two commissioners out of five to function. Three are the minimum for a quorum.[71] To restore the commission to full strength, SBY issued an interim order, called a PERPU, laying out a process for selecting three commissioners to replace the three unable to serve. This order was widely seen as dubious under the appointment provisions of the KPK statute[72] and, in a survey of public opinion, as likely to impair the eradication of corruption.[73]

At this point, momentum was with the police, and the two suspended KPK commissioners were arrested in late October 2009. No sooner did this happen, however, than tapes of a conspiracy of police and prosecutors to frame the two commissioners were played in the Constitutional Court by their lawyers in connection with a claim that their suspension was unlawful. The evidence of false charges of bribery against the commission was so blatant that street demonstrations were held to support them in several major cities, and the police released them from custody. Eventually, the charges against them were dropped, and the CID chief and the deputy attorney general, who was on the tape, were forced by SBY to resign. The CID chief had previously said publicly that "*geckos* [lizards] should not challenge crocodiles," meaning that the weak KPK should not challenge

[70] *Jakarta Globe*, October 7, 2009.
[71] Law no. 30 of 2002, art. 21.
[72] See Law no. 30 of 2002, arts. 29–33. And also as a matter of administrative law, for a PERPU is available only to redress an emergency situation.
[73] *Tempo*, October 12, 2009.

the powerful police. But as SBY responded to the public support for the KPK, he remarked that "[g]etting rid of this mafia in law enforcement and judiciary is one of the government's priorities."[74]

This would prove difficult to accomplish. The attorney general's office had issued a letter dismissing the charges against the two KPK commissioners, but the dismissal was challenged and found legally wanting by a district court in South Jakarta. This determination was then upheld in a high court decision. And so the prosecution was reinstated,[75] only to be dropped again later.

The prosecution had been pursued, even though police investigators knew it was weak, dependent as it was on a witness who gave conflicting stories. The CID chief had been quite vulnerable, for the impending KPK investigation of him apparently involved his role in unfreezing two *trillion* rupiah in frozen Bank Century deposits, whereas deposit insurance would have covered only two *billion*, had the bank failed.[76] A casualty of the Bank Century affair was the minister of finance, Sri Mulyani, who had cleaned out corruption in the tax and finance office of her ministry. Forced to resign over the bank bailout, probably at the behest of an influential businessman-politician whose tax returns and other machinations her ministry had been investigating, she was sent off to the World Bank in Washington.

While these battles were playing out, SBY had asked the DPR to delay passage of the weak KPK bill. The public protests suggested that the KPK had a constituency of supporters after all, but a new KPK law had already been passed before the conspiracy was unmasked. Incensed by prosecutions of legislators, most DPR *fraksi* had wanted to strip the commission of its independent power to prosecute, but PKS and PKB legislators had urged its retention. SBY had also opposed such a limitation.[77] In the end, the KPK was given renewed authority to prosecute and to wiretap, but only "by lawful means."[78] Special anticorruption courts were no longer required to have a majority of three ad hoc judges of the total of five.

[74] Quoted in the *Wall Street Journal*, November 6, 2009. For a good summary and analysis of the conspiracy, see *Jakarta Post*, November 2, 2009.

[75] For this phase, see Allan Bell, "Throwing Stones in Glass Houses? Allegations of Corruption within Indonesia's Corruption Eradication Commission," September 28, 2010, available at hukumonline.com.

[76] *Jakarta Globe*, July 26, 2010. For more on the Bank Century matter, see Christian von Luebke, "The Politics of Reform: Political Scandals, Elite Resistance, and Presidential Leadership in Indonesia," *Journal of Current Southeast Asian Affairs*, vol. 29, no. 1 (2010), pp. 79–94.

[77] F.N. 3:70 (a close adviser to the president).

[78] Law no. 46 of 2009 on the Courts of Corruption Crimes, art. 28(1).

The special courts were to be decentralized. That is, they were to be appointed by the chief district judges in all 33 provincial capitals across Indonesia, and their composition was left to the discretion of those chief judges,[79] who could stack a panel one way or the other.[80]

This was a bill on which the president was lobbied hard by the attorney general, who particularly wanted to have the power to constitute anticorruption courts shifted to local chief judges. Since those judicial offices are themselves centers of corruption, this was an important change, with which SBY agreed. The provision was bound to reduce the efficacy of anticorruption courts. On the other hand, the president himself urged the DPR to keep independent prosecuting authority and the power to tap phones with the KPK. Whether wiretap evidence would always be admissible was left hanging, however.[81]

The 2009 KPK law is a case in which public enthusiasm for anticorruption efforts had some effect on the DPR and might have had a greater effect had the bill's passage been delayed until after the recording of the anti-KPK conspiracy had become public, for that occasion was the high-water mark of public support for the KPK. As things stood, it was a close call. The police and prosecutors nearly succeeded in damaging the KPK permanently. With the collaboration of the DPR, they certainly weakened it. Subsequent budget cuts for the KPK made its job harder, but it was soon back to aggressive tactics, detaining more than a dozen former DPR members in a bribery case in 2011.[82]

As important as aggressive prosecution is, it is not the only determinant of corruption levels. The whole structure of incentives is important. In Indonesia, rule-based law enforcement is weak, and discretion can be bought. Yet some changes have come with the democratic regime. Organized business interests, which have opposed corruption, are better represented than they were under the New Order.[83] Ultimately, this may have some effect, but the KPK saga makes clear that going the

[79] Ibid., art. 26(3).
[80] F.N. 3:70.
[81] Here I rely on a participant in the debates who had a front-row seat. F.N. 3:70.
[82] Further amendments to the KPK law were proposed by the government in 2011, and these, too, proved controversial. Some penalties were to be reduced, and minor offenders were to be given the option of returning state funds and thereby escaping prosecution. On the other hand, the bill provided penalties for false reporting of assets held by public officials. The mood in the DPR remained hostile to the KPK, but a public outcry resulted in shelving of the bill.
[83] Hamilton-Hart, "Government and Private Business," p. 96.

prosecutorial route, without previously or simultaneously moving on other fronts to weaken centers of corruption, is a very risky strategy. The curious suggestion of the chief justice of the Constitutional Court that Indonesia follow China's example and impose capital punishment for corruption[84] might, by raising the stakes, actually increase the resistance of corrupt networks to prosecution powers.

The imposition of requirements for reporting affiliations and transactions, the regulation of conflicts of interest, special controls over particular classes of relationships (such as government contracts), heavy auditing for compliance, protection of whistle-blowers, disciplinary sanctions, and salary increases to discourage the need for corrupt payments – all of these are recommended approaches that go beyond criminal punishment.[85] And, in Indonesia, before prosecutions could make a strong impact, there needed to be a good deal of housecleaning, especially of the police and prosecutors' offices, rendered difficult by connections of officials to powerful politicians. Finally, something would need to be done about political party finance, the source of much leakage from the state budget.

The sequel to the KPK saga was the continuation of the Bank Century inquiry, but now by the DPR, led by some Golkar politicians.[86] Eventually, a majority of the investigators voted a report that declared that the bailout was illegal, and the KPK began its own investigation. It was convenient – and ironic – that neither of the two principal actors in the bailout, the then-minister of finance and the then-central bank governor (later sitting vice president), was a party politician with a base of support and that both were regarded as clean. Ultimately, two independent investigations cleared both of any wrongdoing, but so late that a perception of shady dealings lingered with the public.

Well over a decade after the end of the New Order, it was somewhat more dangerous for officials and politicians to engage in unlawful transactions than it had been previously. Yet Indonesia still had a good deal of corruption, and surveys showed public disappointment with the government's handling of the police attempt to target KPK commissioners. In

[84] Mahfud MD, quoted in *Jakarta Globe*, October 17, 2010.

[85] See John Bell, "Legal Means for Eliminating Corruption in the Public Service," *Electronic Journal of Comparative Law*, vol. 11, no. 3 (December 2007), available at www.ejcl.org/113/article_113-28.

[86] For accounts, see the *Wall Street Journal*, February 24, 2010; *Jakarta Post*, January 14, 2010; *Jakarta Globe*, April 26, 2010.

a 2010 survey, 69.1 percent of respondents declared that the level of corruption in Indonesia was high or very high,[87] and fewer respondents believed the struggle against corruption was going well or pretty well than had thought so previously (by only 51 percent to 84 percent in mid-2009).[88] The judiciary was not thought to be doing a good job upholding the law (only 33 percent thought it was), and fewer than half thought it was doing well against corruption.[89] By contrast, 61 percent of respondents in December 2010 approved of the KPK's work against corruption; and, among well-educated respondents, favorable evaluation of the KPK's performance was far higher than evaluation of the anticorruption work of the police or the judiciary (by 63 percent to 37 and 32 percent, respectively).[90] The KPK, it turned out, had a considerable reservoir of public support that led SBY to renew his anticorruption efforts in 2011.[91] Nevertheless, collusion among politicians, police, the executive, and the courts for improper purposes remained conspicuous. The president's in-law, targeted successfully by the KPK, had been granted an administrative reduction of six months of his prison sentence and then released on parole in 2010 by the minster of law and human rights. There may have been no irregularity in these decisions, but there was suspicion of favoritism.

When the Southeast Asian Games bid-rigging scandal surfaced in 2011, the principal suspect, who had fled the country a few steps ahead of the KPK, proceeded to make serious charges against two KPK commissioners. Thereafter, leading legislators from three parties called for the abolition of the KPK just as it was in the process of investigating the DPR's budgeting body. Again, there were reactions from the public.

It is clear that the public can be mobilized against weakening the KPK, but mobilization for the more general reform of legal institutions is much less likely. Vigorous prosecution will still be necessary, but it is not sufficient.

[87] Lembaga Survei Indonesia, *Ketidakpercayaan Publik Pada Lembaga Pemberantasan Korupsi* (*Public Distrust of Bodies Fighting Corruption*), LSI, Jakarta, October 10–22, 2010, p. 14.

[88] Lembaga Survei Indonesia, *Menurunnya Kinerja Pemerintah dan Disilusi Terhadap Partai Politik* (*Declining Government Performance and Disillusion with Political Parties*), LSI, Jakarta, January, 2011, p. 22.

[89] Ibid., p. 16.

[90] Ibid., pp. 29, 30.

[91] *The Australian* (Sydney), January 19, 2011.

THE RULE OF LAW DEFICIT

As the KPK episode demonstrates vividly, progress toward achieving the rule of law in Indonesia has been disappointingly slow. The police force, separated from the military only in 2000, does not have a fully developed professional, civilian ethos. Singled out by the Asian Human Rights Commission as "discriminatory, unprofessional, unresponsive and discourteous,"[92] the police have managed to remain largely insulated from constitutional norms and international human rights commitments accepted by the Indonesian government in the post-Suharto period. Criminal convictions based mainly on confessions, many of them apparently coerced, during long periods of custody after arrest – often arbitrary arrest – contribute to the reputation of the police for brutality and unaccountability. Other institutions that might redress these deficiencies, most notably the attorney general's office and the human rights courts set up in 2000, have been complicit in police arbitrariness or ineffective in cabining it. In the KPK controversies, as noted, the attorney general lobbied the president for more limited KPK authority and dismissed the charges against the two KPK commissioners only under great pressure and on grounds that were vulnerable to challenge, as we have seen.

The inertness of the ordinary courts in checking police abuse is unsurprising, given their generally poor performance. The Judicial Commission was accorded the power to monitor the ethical behavior of Supreme Court judges, but the monitoring articles were declared unconstitutional.[93] The DPR was then expected to amend the Judicial Commission law to meet the Constitutional Court's objection, but the matter never rose to the top of the DPR agenda.[94] Had ethical monitoring become conspicuous and vigorous, it might have given some impetus to the slow process of judicial reform in general. But that did not happen.

While some observers have ranked Indonesian courts as "the worst in Asia,"[95] the judiciary in Indonesia is not alone in failing to comport with anything approaching rule-of-law norms. In many countries, changes in the judiciary lag behind democratic developments in the political system.

[92] Asian Human Rights Commission, "The State of Human Rights in Indonesia in 2009," p. 20, quoted in "Country Research – Indonesia: A Sugarcoated Human Rights System," unpublished paper, University of Hong Kong Department of Law, May 2010, p. 10.

[93] See this chapter, below.

[94] F.N. 3:70.

[95] *Jakarta Post*, September 15, 2008.

There are nearly as many definitions of the rule of law as there are writers on the subject. There are some who claim that the concept is so amorphous that it cannot be specified with precision.[96] Nevertheless, the core elements seem clear enough: judicial independence from the political branches, accountability of power holders for breaches of the law, equality of citizens before the law, absence of criminal punishment without prior law, fair hearing, and judicial integrity to avert perversions of justice.[97]

The rule of law constrains executive power. By some accounts, democracy cannot be consolidated fully without a strong rule of law, for in its absence elites will not play by the rules.[98] Where restraints on the executive are weak, it is claimed, new democracies fail more than 70 percent of the time, whereas where they are strong, new democracies revert to authoritarian rule 40 percent of the time.[99]

It is here that we encounter a serious paradox concerning the rule of law. Theories that explain the functions of the rule of law for democratic governance generally do not attend to the origination puzzle. How is the rule of law achieved? If the rule of law is essential to the maintenance of democracy, does that mean it precedes the democratic transition? It certainly did not in Indonesia, where legal institutions were progressively degraded during the Guided Democracy and New Order periods. It also emerged slowly in many otherwise vigorous democracies. In Spain and Italy, even after the independence of the judiciary was firmly established, there was evidence of corruption in the courts,[100] and the rule of law was also slow to develop in South Korea and Taiwan after their democratization.[101] If the rule of law is the product of concerted action by citizens to raise the costs of conduct by ruling elites that is inimical to the interests of citizens,[102]

[96] Thomas Carothers, "The Problem of Knowledge," in Thomas Carothers, ed., *Promoting the Rule of Law Abroad: In Search of Knowledge* (Washington, DC: Carnegie Endowment for International Peace, 2006), pp. 15–28.

[97] For a more expansive conception of the rule of law, see Diamond and Morlino, "Introduction," in Diamond and Morlino, eds., *Assessing the Quality of Democracy*, pp. xiv–xvi.

[98] Susan Alberts, "How Constitutions Constrain," *Comparative Politics*, vol. 41, no. 2 (January 2009), pp. 127–43; Guillermo O'Donnell, "Why the Rule of Law Matters," in Diamond and Morlino, eds., *Assessing the Quality of Democracy*, pp. 3–17.

[99] Ethan B. Kapstein and Nathan Converse, "Why Democracies Fail," *Journal of Democracy*, vol. 19, no. 4 (October 2008), pp. 57–68.

[100] Rafael López-Pinto and Leonardo Morlino, "Italy and Spain," in Diamond and Morlino, eds., *Assessing the Quality of Democracy*, pp. 85–122.

[101] As pointed out by Diamond and Morlino, "Introduction," in ibid., p. xxxvi.

[102] See, e.g., Alberts, "How Constitutions Constrain."

does that not suggest that the rule of law generally follows the growth of democracy, which means it is not a precondition to democracy?

This sort of origination puzzle is particularly acute for the rule of law, because, insofar as the rule of law demands obedience even when it is inconvenient, and insofar as it binds governors as well as the governed, it habitually gets in the way of the powerful. So they have every reason to reject it. This implies that, in most countries, the rule of law will not arrive as a benign inheritance from the authoritarian regime. And, indeed, the malevolent role of legal institutions during certain authoritarian periods can actually retard the healthy growth of legal institutions after democratic transitions, as distrust of the judges under the Ancien Régime did in the early French Republic.

There is undoubtedly more than one path to the rule of law. At least one plausible route involves a certain configuration of factional alignments. If the executive dominates the legislature, as it does in a considerable number of Asian and African states, even states with relatively democratic elections, the judiciary is most unlikely to be able to marshal the resources needed to create and maintain its own independence. It is, as Hamilton says in *Federalist* Number 78, the "least dangerous branch," possessed of "neither the purse nor the sword,"[103] which is to say it is inherently weak and dependent on external support for its independence. That external support is most likely to be forthcoming when the executive and legislature are divided, when there is a strong minority in the legislature, or when a nominally united ruling party is strongly divided by factional loyalties. At such times, courts may be able to count on support from those who oppose the executive to shield them from reprisals for decisions that affect the executive's interests.

If this is correct, it suggests that judicial independence in many states must await the development of serious competitive politics in the political branches. The courts cannot lead democratic reform; they are the beneficiaries of that reform. No amount of judicial training, no normative commitment to the rule of law, no imported statutes, or new court houses, or computerized case management systems can substitute for the protection that judges can have when political elites are divided.

Even then, judicial independence can be precarious if the executive is willing to incur the political costs of suppressing it. Consider an illustration from Malaysia.

[103] Alexander Hamilton, *The Federalist*, no. 78, in Ian Shapiro, ed., *The Federalist Papers* (New Haven: Yale University Press, 2009), pp. 391–97.

In 1986 and 1987, in a series of cases, the Malaysian courts had ruled against the government. The cases were politically sensitive. One involved the withdrawal of a foreign journalist's work permit, another the detention of an opposition politician, a third a government contract awarded to an influential firm. On the horizon was an appeal that would determine the lawlessness of a close vote in an internal political party election in which Prime Minister Mahathir Mohamad had narrowly defeated a challenge from a former political ally. The future of the ruling party and of the prime minister himself was at stake. Before the appeal was heard, the lord president of the Supreme Court was suspended, the hearing was postponed, and a tribunal was constituted to decide whether the lord president should be dismissed. When a five-member panel of the Supreme Court issued a stay of that tribunal's proceedings, all five judges were suspended, and two of them were ultimately dismissed. When the party case was eventually heard by a reconstituted bench, the prime minister's faction prevailed. The Malaysian judiciary, previously relatively compliant, was taught an unforgettable lesson in subservience.[104]

It may have been accidental that the courts had felt at liberty to thwart the government in the series of cases that had brought on the crisis, but it seems likely that the new atmosphere of political competition freed up the space for judicial independence. For the first time in decades, there had been a credible challenge to a ruling party accustomed to winning large majorities at the polls. It turned out, however, that the prime minister had many more resources than were possessed by his opponents and infinitely more than the courts. Elites interested in the rule of law could murmur their dissatisfaction, and a few, including the dismissed lord president, could publish their critiques,[105] but that was the limit of their ability. It may have seemed that political power was evenly divided between the two factions, but ultimate power was in the hands of one side alone.

Contrast the configuration in Indonesia since 1998. Party fortunes rose and fell at the polls from 1999 to 2009, but no party came close to dominating all of government. The result was a factional equilibrium, in which courts, especially the newly created Constitutional Court, had room to operate with independence, even thwarting government policy on constitutional grounds. No one considered disobeying inconvenient judicial judgments. There was no equivalent of Mahathir, who could

[104] For an account of these events, see Salleh Abas, *May Day for Justice* (Kuala Lumpur: Magnus Books, 1989).
[105] Ibid.

single-handedly dismiss judges. If anyone had tried to use formal power for this purpose, others would have stepped up to prevent it, for such an action would have constituted an implicit threat against them, too. Factional balance was the key to creating this space for independent courts in Indonesia. Here, too, multipolarity was a benign condition.

An alternative path is suggested by Martin Shapiro and Alec Stone Sweet, who argue that a major route to the legitimacy of judicial review consists of the ability of courts to make themselves useful to political decision makers.[106] They cite judicial review as a way of helping to police boundaries between the central government and the states or provinces in federal countries. This becomes the opening wedge to judicial review more broadly. Their argument is that a federal system requires a neutral umpire, and for this purpose judicial independence is accepted, whereupon judicial review can be extended to other areas. Shapiro and Stone Sweet do not see this as the only path to wide-ranging judicial review, but as a common path. Their main point is that the rule of law often flourishes when the courts make themselves useful to those holding political power.

Similar arguments have been made by others, who suggest that, by adjudicating citizen complaints, courts can provide useful information to rulers about the performance of the bureaucracy.[107] Jennifer Widner proposes a three-step process of legitimizing judicial independence.[108] First, the courts can make themselves useful by helping politicians root out corruption and by serving as a neutral arbiter between or among factions. Once they have this basic authority, courts can take the second step: building public support by displaying neutrality and efficiency to the public. The third step, according to Widner's study of Tanzania, is to encourage the growth of party competition, on the assumption that a competitive landscape furnishes a more secure environment for judicial independence. All of this assumes that the first step, concerning corruption and factions, is one that political leaders are happy to have courts take. Often they will not be. Recall the Malaysian case, which involved a factional dispute.

There are other ways for the courts to make themselves useful, such as by providing a neutral forum for foreign investors who might otherwise

[106] Martin Shapiro and Alec Stone Sweet, *On Law, Politics, and Judicialization* (New York: Oxford University Press, 2002).

[107] James Rosberg, cited in Jennifer Widner, "Building the Rule of Law in Fragile States," unpublished paper, Princeton University, April 27, 2007, p. 5.

[108] Jennifer A. Widner, *Building the Rule of Law: Francis Nyalali and the Road to Judicial Independence in Africa* (New York: W. W. Norton, 2001).

fear for their capital. Many states that wish to attract foreign capital nevertheless do not see the need for the assistance of an independent judiciary, so the hypothetical existence of this function may not lead to the rule of law, as it has not in China. Alternatively, commercial disputes may be adjudicated fairly, as they are in Singapore, while political disputes are not, as they are not in Singapore. Likewise, even an authoritarian regime may wish to build public support by reassuring its subjects that the worst forms of arbitrariness will receive judicial correction. Widner cites Uganda under Yoweri Museveni, but this is clearly an exceptional case.

Tom Ginsburg argues convincingly that judicial independence emerges when current leaders are uncertain of their prospects and wish to build in insurance against repression by their opponents.[109] The growth of constitutional courts in Asia is attributable to the politicians' desire for insurance. Although the precise mechanism is different, this points again to the positive role played by factional equilibrium, and indeed Mark Ramseyer argues that judicial independence is a function of party competitiveness, which explains why, in a dominant-party system such as Japan's was until recently, the judiciary's independence has been quite limited.[110]

The overall (still tentative) conclusions seem clear:

1. In most cases, robust political competition is a precondition to the development of judicial independence, rather than the other way round.
2. In some cases, courts may find alternative ways to make themselves useful to ruling politicians, even absent robust competition, and the courts may thereby find ways to expand their mandate, but these paths are unusual and idiosyncratic.
3. Judicial independence in commercial cases can be limited to those cases and may not evolve into independence from ruling politicians even after considerable time has elapsed.
4. Without political support, what appears to be a significant rule-of-law inheritance can be reversed.
5. The most promising course to promote judicial independence lies in promoting democratic competition.

[109] Tom Ginsburg, *Judicial Review in New Democracies: Constitutional Courts in Asian Cases* (New York: Cambridge University Press, 2003).

[110] J. Mark Ramseyer, "The Puzzling (In)dependence of Courts: A Comparative Approach," *Journal of Legal Studies*, vol. 23, no. 2 (June 1994), pp. 721–48.

In short, judicial independence is generally an offshoot of moderate pluralism, expressed within rules of a democratic game. What that means is that, in most newly democratic countries, the rule of law may develop, at best, along with democracy or, more likely, may grow over time once democracy is established.

This is a very important point for understanding the frail condition of the rule of law in Indonesia long after the installation of a democratic regime. Judges gained a good deal of independence, but that independence helped them ward off challenges to their integrity and their competence. Judicial independence, acquired early in the process of democratization, makes reform of a corrupt or inept judiciary harder. And since the insider-dominated, gradual process of constitutional change involved no dramatic purge of incumbent officers, judicial integrity and competence remained issues long after democracy fastened its hold on the polity.

There are, moreover, sometimes contradictions between democracy and the rule of law. Politicians may prove so responsive to their constituencies that they impair the rights of some citizens. Judges must then decide how wide an ambit of democratic discretion is to be left for the political branches.[111] Doctrines of judicial restraint may develop in order to defer to majority rule; or, alternatively, courts may intervene aggressively in reviewing political decisions, perhaps impairing majority rule or giving rise to legislative irresponsibility, as legislators respond promiscuously to popular demands, secure in the knowledge that excesses will be corrected in the courts. All of these are problems swept aside by assumptions that democracy and the rule of law are always very good friends, if not close relatives. Some of these difficulties may have arisen in Indonesia, as we shall soon observe.

The definitive treatment of judicial decline in Indonesia, by Sebastiaan Pompe, traces its origin to the colonial period, when there was often submission by judges to executive prerogatives.[112] Matters became much worse under Sukarno, who abolished the separation of powers, allowed government to interfere in pending cases, and intimidated judges directly.[113] Suharto proceeded to discredit independent judges and placed the courts under the Department of Justice.[114] Judges were subject to

[111] Hence the well-known "countermajoritarian" difficulty discussed extensively in the United States literature on judicial review. See, e.g., Alexander M. Bickel, *The Least Dangerous Branch: The Supreme Court at the Bar of Politics* (Indianapolis: Bobbs-Merrill, 1962).

[112] Pompe, *The Indonesian Supreme Court*.

[113] Ibid., pp. 52–64.

[114] Law no. 14 of 1970 on the Basic Principles of the Judiciary.

administrative transfer on an arbitrary basis; independent judges were especially singled out. In sensitive cases, judgments were dictated by political authorities. By 1970, corruption and ineptitude had set in. Corrupt judges, vulnerable to exposure, were politically compliant. Incompetent judges were appointed to the Supreme Court, including the chief justiceship.[115] By 1996, a new low had been recorded. Lower-court judges were, by Pompe's account, cynical and resistant to reform, as were many prosecutors and police officers. Cases in the Supreme Court were subject to illegal levies on litigants that were then pocketed. The court and its large bureaucracy had become a front for the collection of bribes. Court personnel withheld issuance of decisions until they were paid illegal fees. Sometimes they falsified judgments altogether.[116] Legal doctrine was in shambles. The government had not lost a case in the Supreme Court in 40 years.[117]

Reform began early in the post-Suharto period with the passage of a statute that restored the separation of judicial and executive power, allowing the Supreme Court to resume management of the courts.[118] Given the state of the courts, the first temptation for reformers was to appoint judges from outside the judicial system. This was done in the Supreme Court as early as 2000, and by 2002 an outsider had been appointed chief justice, hopefully paving the way for change in the way the court did business. New courts were also created. When a specialized commercial court was established, ad hoc judges were to be appointed from among members of the private bar with reputations for integrity, as was later done with the Anti-Corruption Court, but the Judges' Association resisted, and the minister of justice, then still in charge, relented. In short order, there were reports of corrupt and inept decisions in the new court.[119]

If existing courts are unsatisfactory, one route to quick reform is to circumvent them. The independent Judicial Commission, the Anti-Corruption Court, the Human Rights Court, the Fisheries Court, and some others were all established with the possibility that noncareer judges might sit with career judges. But, as we have already seen with

[115] Pompe, *The Indonesian Supreme Court*, pp. 111–56.
[116] See especially the improprieties enumerated in ibid., p. 163.
[117] Ibid., pp. 157–72.
[118] Law no. 35 of 1999 on the Amendment of Law no. 14 of 1970, art. 11.
[119] See Daniel S. Lev, "Comments on the Judicial Reform Program in Indonesia," in International Monetary Fund, Legal Dept., IMF Institute, *Current Developments in Monetary and Financial Law,* Volume 4 (Washington, DC: International Monetary Fund, 2005), pp. 761–66, at pp. 763–65.

the Anti-Corruption Court, the appointment of noncareer judges creates friction with long-serving career judges. There were also considerable institutional tensions between the Judicial Commission and the Supreme Court, when the former had attempted to challenge judges of the latter, and between the KPK and the Supreme Court, when the former had raided chambers of several judges for evidence of corruption. Movement toward a cleaner judiciary was glacial. Judges of low integrity continued to be appointed, and defendants in corruption cases received suspiciously light sentences.[120]

The apogee of the specialized court is the Constitutional Court. Created after the impeachment and removal of Abdurrahman Wahid in 2001,[121] it was intended to take some of the politics out of any such future proceedings, but it was also the fulfillment of the Indonesian judiciary's sporadic quest for a judicial review function in the years before its enfeeblement at the hands of two consecutive authoritarians.[122] A Constitutional Court was easy to agree on, both because it would help in averting a recrudescence of authoritarianism and because judicial review and rights protection are part of the standard equipment of new democracies.[123] Conferring the power of judicial review on a wholly new body, rather than on the Supreme Court, was especially attractive, because the reputation of the Supreme Court was so tarnished and the Constitutional Court could be constituted from scratch.[124] In any case, the aim was to separate cases with

[120] See Rifqi S. Assegaf, "Judicial Reform in Indonesia, 1998–2006," in Naoyuki Sakumoto and Hikmahanto Juwana, eds., *Reforming Laws and Institutions in Indonesia: An Assessment* (Chiba-Shi, Japan: Institute of Developing Economies, 2007), pp. 11–44. See also Tim Lindsey, "The Trajectory of Law Reform in Indonesia: A Short Overview of Legal Systems and Change in Indonesia," in Lindsey, ed., *Indonesia*, pp. 1–22; David K. Linnan, "Indonesian Law Reform, or Once More Into the Breach: A Brief Institutional History," in ibid., pp. 68–91.

[121] Law no. 24 of 2003 on the Constitutional Court.

[122] Pompe, *The Indonesian Supreme Court*, p. 172; Susi Dwi Harijanti and Tim Lindsey, "Indonesia: General Elections Test the Amended Constitution and the New Constitutional Court," *International Journal of Constitutional Law*, vol. 4, no. 1 (January 2006), pp. 138–50, at pp. 146–47. An early draft (ca. 2000) of a bill on the Supreme Court by distinguished Indonesian lawyers envisioned that it would have the power of judicial review. F.N. 2:57.

[123] See Donald L. Horowitz, "The Federalist Abroad in the World," in Shapiro, ed., *The Federalist Papers*, pp. 502–32.

[124] Constitutional Court judges are chosen, as is often the case in other countries, from several sources. In Indonesia, they are appointed by the Supreme Court, the president, and the legislature, using a fit-and-proper test on nominations from the Judicial Commission. For a survey of such courts, see Donald L. Horowitz, "Constitutional Courts: A Primer for Decision Makers," *Journal of Democracy*, vol. 17, no. 4 (October 2006), pp. 125–37.

political significance involving impeachment, the lawfulness of political parties, and the validity of elections and place them in a court parallel to the Supreme Court.[125]

"The Constitutional Court has taken to judicial review with gusto,"[126] as Pompe has aptly said. Early on, it used its power to review elections to hear hundreds of contests arising out of the 2004 DPR elections, changing results in some,[127] and the same occurred in 2009.[128] In 2004, the court struck down an article of the election law that had barred communist candidates.[129] (In fact, the Communist Party is a nonexistent threat in contemporary Indonesia, but the court put to bed an old Suhartoist bugaboo, thereby closing a chapter and affirming a right to free political association.) In a very unpopular decision, the court also held it unlawful to punish the Bali bombers of 2002 under a retroactive statute passed to deal with that case.[130] The next year it decided that an article of its own enabling law, prohibiting judicial review of statutes enacted before adoption of the First Amendment, was unconstitutional, because the constitution authorizes judicial review without any such limit.[131] The court also created implied obligations for the Indonesian state to fulfill, based on what might be regarded as purely aspirational or precatory provisions of the amended constitution.[132] And, of course, it limited the powers of the KPK in quite serious ways. It has, comments Simon Butt, put judicial independence ahead of judicial accountability.[133] In 2008, its chief justice, responding to a question about when action beyond the court's authority could be justified, replied that "we need to do a breakthrough in the legal field in order to develop law in Indonesia," provided that legal innovations

[125] F.N. 3:65 (a key member of PAH I). PAH I had traveled to a number of countries in search of ideas. The electoral dispute function of the Constitutional Court resembles that of South Korea, which it visited.

[126] Sebastiaan Pompe, "Judicial Reforms in Indonesia: Transparency, Accountability and Fighting Corruption," paper presented at the International Conference and Showcase on Judicial Reforms, Makati City, Philippines, November 28–30, 2005, p. 5. Constitutional Court decisions may be found at http://www.mahkamahkonstitusi.go.id.

[127] Susi Dwi Harijanti and Tim Lindsey, "Indonesia: General Elections Test the Amended Constitution and the New Constitutional Court," *International Journal of Constitutional Law*, vol. 4, no. 1 (January 2006), pp. 138–50, at p. 148.

[128] *Jakarta Post*, May 13, 2009.

[129] Perkara 011–017/PUU-I/2003 (Mahkamah Konstitusi).

[130] Perkara 013/PUU-I/2003 (Mahkamah Konstitusi).

[131] Perkara 066/PUU-II/2004 (Mahkamah Konstitusi).

[132] For an analysis, see Simon Butt, "The Constitutional Court's Decision in the Dispute between the Supreme Court and the Judicial Commission," in McLeod and McIntyre, eds., *Indonesia*, pp. 179–99, at p. 183.

[133] Ibid., p. 195.

are "not against . . . the law."[134] Its tautology aside, this is an expansive conception of the judicial function.

The Constitutional Court's decisions are published, its reasoning is transparent, and there are occasional dissents. The court has been fearless, and it has built up a stock of political capital because of its apparent integrity and good faith, despite much criticism of individual decisions.

The court's reasoning has, as we have seen, occasionally been a bit rigid or tied unduly to small accidents of language, and the judges have not yet discovered methods of interpreting statutes narrowly, so as to save the legislative purpose from complete annihilation through unconstitutionality. Some judgments have relied excessively on analogy, as, for example, when a majority decided that, because independent candidates could run for regional executive positions in Aceh, they must be allowed to do so elsewhere as well.[135] The court leaned on article 18 of the Constitution, which states that regional executives are to be elected in a democratic manner, and articles 27(1), 28D, and 28I, which guarantee equal treatment to all citizens, while it gave short shrift to the fact that Aceh's autonomy was crafted under very special conditions. This was a major intrusion into the political process, with little regard for the functions of political parties in a democracy, just as the court later showed little respect for the nuances of electoral law when it invalidated portions of the open-list system.[136]

The possible implications of the Aceh decision for the political process are enormous.[137] In Aceh, local parties are also allowed to contest regional elections. Does this mean that local parties must be permitted to contest regional elections throughout the country? If so, then the general devolution statutes are, by judicial fiat, to be expanded to permit whatever is allowed under the special autonomy regimes for Aceh and Papua, both of which were created to respond to the particular conditions prevailing in those regions. There is little chance that the legislature would ever have countenanced such practices outside those provinces. Put to such a choice, legislators would almost surely have scaled back permission for local parties to contest in Aceh and Papua, rather than concede the point

[134] Constitutional Court, "Summary of News," December 22, 2008.
[135] Perkara 005/PUU-V/2007 (Mahkamah Konstitusi).
[136] Perkara 22–24/PUU-VI/2008 (Mahkamah Konstitusi). See Chapter 6, above.
[137] And probably not understood by the court. See the paper by Justice Maruar Siahaan, "Important Decisions of the Constitutional Court of the Republic of Indonesia, December 2006–September 2007," presented at the Fifth Conference of Asian Constitutional Court Judges, n. p., n. d., pp. 4–6.

nationwide. And that, in turn, would have encountered resistance in both provinces.

A particularly controversial decision involved the conflict between the Judicial Commission and the Supreme Court. In 2004, the DPR created a Judicial Commission, a seven-member body charged with, among other things, making recommendations to the DPR on Supreme Court appointments and reviewing the performance of judges, with a view to rooting out corruption.[138] The commission has only the power to recommend action, but the Supreme Court failed to act on any of its recommendations. When the commission recommended that the Supreme Court investigate several Supreme Court judges, including the chief justice, the chief justice pointedly refused, whereupon the commission sought a way to obtain a performance assessment of the entire Supreme Court. This escalated the conflict to the point at which the Supreme Court applied to the Constitutional Court for a determination of the constitutionality of the commission's oversight of the Supreme Court.[139] The Constitutional Court decided that the powers conferred on the Judicial Commission could not, consistently with the constitution, extend to oversight of Supreme Court judges, even though those powers were merely advisory.[140] (The court also decided that the Judicial Commission Law had no application whatever to the Constitutional Court, a question that was not really before it.) The court held the statute deficient in its application to the Supreme Court, because it impinged on judicial independence and because it did not specify which aspects of judicial conduct the commission was empowered to review. It explicitly found the review of judicial decisions outside the normal appellate process to offend judicial autonomy.

The Constitutional Court expressed the hope that the Supreme Court would police itself and free itself and the lower courts of corruption, perhaps a pious hope given the history of judicial corruption in Indonesia. What the court's decision failed to do was set out what the Judicial Commission might do to fight corruption in the courts without offending the constitution.

The Constitutional Court has been "a reform over-achiever."[141] It has solidified judicial independence and made its decisions stick even when

[138] Law no. 22 of 2004 on the Judicial Commission.

[139] For an account of the controversy, see Butt, "The Constitutional Court's Decision in the Dispute between the Supreme Court and the Judicial Commission," pp. 186–92.

[140] Perkara 005/PUU-IV/2006 (Mahkamah Konstitusi).

[141] Simon Butt, "Indonesia's Constitutional Court: A Reform Over-Achiever?" *Inside Indonesia*, no. 87 (July–September 2006), pp. 10–11.

much of the public rather clearly disagrees with them. In this way, it has fulfilled the expectations of many of those who create constitutional courts. It is easier to create a new court than to reconstruct existing courts with sitting judges of dubious probity and ability. A new court can quickly vindicate rights and, in an atmosphere of democratic reform, can beget compliance. But can a constitutional court lead a rule-of-law reform strategy?

In one way, certainly, yes – by setting an example of honest adjudication, rights consciousness, openness of process, willingness to hear criticism, and unwillingness to curry favor with the rich or powerful. But a constitutional court is a specialized body, outside the judicial chain of command of the courts that hear the far more numerous disputes that arise in the society at large. In career path, composition, term of office, functions, and jurisdiction, the Indonesian Constitutional Court is cut off from the ordinary courts. Its judges are appointed principally from outside the career judiciary, for limited terms, and for a specific function. In its first decade, it had had only a very limited impact on the Supreme Court, which had produced a "blueprint" for its own reform in 2003 but done very little to build the house.[142] Even in cases involving similar subject matter, the approaches of the two courts were widely divergent.[143] And at the lower levels of the ordinary court system, where the interests of most citizens are affected most often, the work of the Constitutional Court can be presumed to have little or no impact.

If the demonstration effect of the Constitutional Court's work product is dubious, its ability to establish a working dialogue with the DPR seems even more questionable. For constitutional adjudication to function, particularly when it involves invalidating important statutes or large portions of them, the legislature needs to respond by understanding not just

[142] See Democracy International, *Indonesian Democracy and Governance Assessment*, Final Report Submitted to USAID, June 2008, pp. 10–11. The report's authors were Eric Bjornlund, R. William Liddle, Pratikno, and Blair King.

[143] In 2006 and 2007, the Constitutional Court had held that several articles of the penal code criminalizing defamation of the government and the president and vice president to be unconstitutional. Perkara 06/PUU-V/2007 (Mahkamah Konstitusi); Perkara 013–022/PUU-IV/2006 (Mahkamah Konstitusi). The Supreme Court, however, was still ruling against *Time* magazine's Asia edition in a case involving defamation of Suharto's family. In 2009, the Supreme Court finally reversed the 2007 panel judgment and ruled in *Time*'s favor. Of course, the precise issue was not the same, but the Supreme Court's initial view of the scope of free expression seemed to differ from that of the Constitutional Court. The 2009 decision is Putusan 273/PK/PDT/2008 (Mahkamah Agung). The 2007 decision is Putusan 3215K/PDT/2001 (Mahkamah Agung).

what is forbidden but what is permitted and by following up with more narrowly tailored laws that can still accomplish its legitimate objectives. Two features of the Indonesian constitutional process appear to have thwarted such possibilities. The first is the large cleaver wielded by the Constitutional Court, which, in the Judicial Commission case, for example, left little room for official, extrajudicial scrutiny of the property of judicial behavior. The second is the apparent lack of capacity in the DPR to study and respond to Constitutional Court decisions in ways that both respect constitutional limitations and explain legislative purposes more forcefully and articulately, as, for example, in the aftermath of the electoral law cases. The DPR's aims have usually been legitimate, but the court's understanding of them has sometimes been imperfect. Yet the DPR has not engaged the court in a dialogue that could balance government purposes against the sensitivity to rights claims that animates the court. Indeed, the DPR has rarely produced new legislation in response to decisions of the Constitutional Court rendering legislative provisions unconstitutional.

A president elected on an anticorruption platform implies continuation of the practice of appointing reformist judges and prosecutors, but the Supreme Court is a very large and unwieldy body, with slow turnover of personnel, and it has considerable power to appoint lower-court judges, not all of whom are of the highest integrity.[144] Some judges and judicial officials have been removed,[145] but establishment of a judiciary above reproach can be a slow process.

In fact, overall, the rule of law tends to emerge slowly in many otherwise vigorous democracies. Because it is so commonly a consequence of democratic competition, the rule of law may be the last piece to fall into place in Indonesia's democratic regime.

THE INADEQUATE PROTECTION OF MINORITIES

When the proposal to include the seven words of the Jakarta Charter, obligating Muslims to observe Islamic law, was rejected by the MPR in 2002,[146] it might have been thought that the emerging Indonesian constitution was a thoroughly secular document.[147] That conclusion would

[144] See Assegaf, "Judicial Reform in Indonesia, 1998–2006," p. 21.
[145] Ibid., p. 26.
[146] See Chapter 4, above.
[147] For the view that the Indonesian constitution creates a secular state, see Arskal Salim, *Challenging the Secular State: The Islamization of Law in Modern Indonesia* (Honolulu: University of Hawaii Press, 2008), p. 170. But compare ibid., p. 177.

have been fortified by the inclusion of a panoply of human rights guarantees modeled on the Universal Declaration and the International Covenant on Civil and Political Rights. Those guarantees included rights to freedom of religion.[148]

The resulting constitution, however, is not 100-percent secular. The preamble contains the Pancasila, which, among other things, declares Indonesia to be a "state based on the belief in the One Supreme God" (*Ketuhanan Yang Maha Esa*), a phrase repeated in article 29, which "guarantees all persons the freedom to worship, each according to his or her own religion or belief." From time to time, government has acted in ways that not only favor religion but oblige citizens to declare their adherence to one or another faith. Identity cards, obligatory for all Indonesian citizens, require a religious identity to be stated; and historically only five religions have been deemed acceptable – Islam, Protestantism, Catholicism, Hinduism, and Buddhism – except that, from time to time, Confucianism has been added to the list. Neither atheism nor agnosticism nor any religion outside the approved list could be specified by a citizen. Both before and after the MPR amended the constitution of 1945 to add guarantees of freedom of religion, statutes made a variety of accommodations for Islam. In 1999, Law number 38 provided for the official collection of *zakat*, the Muslim charitable tax, and later laws regulated *wakafs* (Muslim charitable endowments) and Islamic banking arrangements.[149] When the State Secretariat objected, the *zakat* law was framed so as to stop short of compulsory collection, but *zakat* payments were deemed tax deductible, preferential treatment not available to charitable contributions by non-Muslims.[150] The constitution certainly did not make Indonesia an Islamic state or even confer upon Islam the status of the state religion, but neither its language nor practice under the constitution could be read as rendering the Indonesian state completely neutral with respect to religion.

In some measure, this explains the equanimity with which even Islamic political parties accepted the necessity to reject the Jakarta Charter as the constitution was being revised. That rejection did not mean that Islam

[148] For the abundant guarantees of freedom of religion, although qualified by the belief in "the One Supreme God," see 1945 constitution of Indonesia, as amended, arts. 28E, 28I(1), 29.

[149] See Jan Michiel Otto, "Sharia and National Law in Indonesia," in Otto, ed., *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries Past and Present* (Leiden: Leiden University Press, 2010), pp. 433–90, at p. 454.

[150] See Salim, *Challenging the Secular State*, pp. 127–30.

could not be infused into an array of state practices under the new constitution. There were limits, to be sure. Early on, for example – in 2000 – there was an attempt to enact statutes prohibiting mixed marriages and setting restrictive conditions on building new churches, conditions that included obtaining permission of inhabitants of the neighborhood. That condition would effectively have meant that churches could not be built in religiously mixed neighborhoods. The proposed bill met with stiff Christian resistance and was rejected, but the condition of neighborhood permission was revived later in a joint ministerial decree,[151] which seems in flat contradiction to the guarantees of freedom of worship in article 29 of the constitution. Years later, in 2012, The Religious Affairs Ministry, headed by an Islamist hardliner, was lobbying for support of a misnamed Interfaith Harmony bill that might codify yet additional restrictions on religious freedom. The sense on the part of minorities that Indonesia is undergoing creeping Islamization is unmistakable.

In the background to these developments lies what Luthfi Assyaukanie describes as a long and lively debate among Muslim leaders and intellectuals about the relation of religion to the state.[152] With the growth of more conspicuous displays of Muslim piety and practice, the old distinction between *santri* and *abangan* ways of life in Indonesia has receded. In its place are debates within the community of observant Muslims about Islam and the larger polity.

For some in the Masjumi tradition – and this includes most of those who proposed inclusion of the Jakarta Charter in the amended constitution – Indonesia should be a state that is both Islamic and democratic. But Indonesia is a religiously plural society, and many Muslim thinkers and politicians, even some in the Masjumi stream, reject the idea of an Islamic state for such a society. They favor religious and political pluralism, but not a secular state. Their aim is a state that accommodates and assists religion – for example, by providing for religious teaching in schools – but does not compel a particular version of religious observance or legal obligation. And then there are those observant Muslims who prefer a secular state and would leave religious obligation to private ordering.

[151] These events are recounted in Otto, "Sharia and National Law in Indonesia," pp. 451, 460–61.

[152] Luthfi Assyaukanie, *Islam and the Secular State in Indonesia* (Singapore: Institute of Southeast Asian Studies, 2009). The discussion that follows concerning these debates draws heavily on the more nuanced treatment in this book.

"The political imagination of santri Muslims is," says Luthfi, "no longer homogeneous."[153] Yet the direction in which relations between mosque and state has been moving is more congenial to those who favor a religiously engaged state, and in some respects – albeit so far only at the margins – an Islamic state, than it is to those who see Indonesia as a secular liberal democracy.

As this has happened, Indonesia has become more open to religious intolerance, both within Islam and between Islam and other religions. Democratic, majoritarian politics has played a part in this, as some politicians make electoral calculations. Behind these calculations lie the ambivalent attitudes of Indonesian Muslims about religious tolerance.

Indonesia is conflicted on the issue of religious tolerance. A survey of Muslims conducted in 2007 revealed many intolerant attitudes. A majority (53 percent) agreed that "people who take liberties when interpreting the Qur'an should be jailed," a near-majority (48 percent) believed that adulterers should be stoned, and the same fraction (47 percent) agreed with a *fatwa* prohibiting the heterodox Ahmadiyah sect in Indonesia.[154] Too much should not be read into these results. Some of the responses undoubtedly reflect a sense of what *Shariah* was thought to require, rather than an indication of action respondents would actually be willing to condone, but their overall thrust is far from liberal. The Indonesian Criminal Code outlaws blasphemy, and a dissident sect leader was imprisoned in 2006 for advocating the consumption of pork, among other religious offenses.[155] We have seen that, after devolution, a significant number of regional governments enacted some version of *Shariah*-inspired regulations.[156] The constitution is very clear on freedom of religion. Yet, even at the national level, as we have noted, the administrative regulation that purported to regulate neutrally the construction of new houses of worship has made the building of churches more difficult. Although the regulation was opposed by both NU and Muhammadiyah, many politicians were reluctant to confront the proponents. In 2007 and 2008, there was a considerable number of forced church closures in Muslim areas.[157]

[153] Ibid., p. 227

[154] Barton, "Indonesia's Year of Living Normally," pp. 135–36.

[155] Alfitri, "Religious Liberty in Indonesia and the Rights of 'Deviant' Sects," p. 26. The anti-blasphemy provision was inserted into the code by a presidential instruction in 1965.

[156] See Chapter 5, above.

[157] Mietzner, "Indonesia in 2008: Democratic Consolidation in Soeharto's Shadow," in Daljit Singh, ed., *Southeast Asian Affairs 2009* (Singapore: Institute of Southeast Asian Studies, 2009), p. 109.

In 2011, there were church burnings in Central Java after a crowd concluded that a five-year sentence for blasphemy by a Christian was too lenient, and in West Java Ahmadis were attacked mercilessly in a home as police did nothing to protect them. In the aftermath, the government was largely inert.[158] From 2008 to 2011, there were some 180 such attacks on Ahmadis. Religious teachers and students, both modernist and traditionalist, exhibit high levels of religious intolerance; the vast majority (83 percent) support enactment of *Shariah*, and nearly two-thirds profess to support only pro-*Shariah* political candidates.[159] Yet the two largest Muslim organizations, the modernist Muhammadiyah and the traditionalist Nahdlatul Ulama, have both been wary of connecting politics to religion.[160] At the 2009 elections, Islamic parties fared even more poorly than they had in 2004, and Islamist parties did particularly poorly. When it comes to religion, Indonesia's Muslims seemed to speak – and sometimes act – one way and vote another.

Blasphemy prosecutions, rare under Suharto's New Order, became more common during the democratic period, with at least 120 people, mainly Christians or members of Muslim minority sects, convicted after 1998. Vigilantism became frequent. In 2011, there was a suicide bombing at a church in Solo and remote bombings elsewhere. Homes belonging to Shia Muslims were also torched. Dissenting religious views were censored and offensive performances canceled because of threats. A book discussion by the well-known Canadian liberal Muslim activist Irshad Manji was disrupted, her lecture at Gadjah Mada University was cancelled for "security reasons," and books authored by her were destroyed at yet a third venue, all in May 2012. In the same month, a performance by American pop star Lady Gaga, which had sold more than 50,000 tickets, was cancelled when police refused to issue a permit after threats were made by extremists.

None of this was entirely new. As early as 2008, police appear to have stood by as a mob attacked an interfaith rally to commemorate the birth of the *Pancasila* ideology. Despite the presence of hundreds of police, more than 70 people were wounded.[161] Yet the brazenness and frequency of the

[158] For an account, see *Jakarta Globe*, February 10, 2011. The Ahmadis are a heterodox sect subject to persecution in many Muslim countries. Indonesia's Minister of Religious Affairs, Suryadharma Ali, supported a ban on the Ahmadiyah sect.

[159] Barton, "Indonesia's Year of Living Normally," p. 136.

[160] See Robert Hefner, *Civil Islam: Muslims and Democratization in Indonesia* (Princeton: Princeton University Press, 2000).

[161] See the commentary by M. Syafi'i Anwar, *Jakarta Post*, April 15, 2012.

assaults grew over the years, and the inertness of government leaders became unmistakable. In 2012, some mainstream Muslims began to think of countering violence by creating what would amount to paramilitary forces.

Encouraged by actions of the Majelis Ulama Indonesia (Indonesian Ulama Council), which had pronounced a series of controversial fatwas that banned the Ahmadiyah and condemned liberalism, secularism, and pluralism as *haram* (forbidden), groups such as the Fron Pembila Islam (the Islamic Defenders Front) became increasingly violent street-level enforcers of orthodoxy. Indonesia's police and politicians alike have been vigilant about what is defined internationally as terrorism but somnolent about vigilantism and vicious mob action.

In spite of the strong position of secular political parties, Indonesia's legislators have enacted some constitutionally dubious statutes concerning religion. Two of the most serious pertain to education and to conduct classified as pornography.

In 2003, the DPR passed a new education law.[162] The bill had been initiated in the legislature, but Megawati's education minister, a man with a strong religious background, produced a government-sponsored version that contained a clause stating that the goal of the education system would be to create citizens who were "faithful," "pious," and of good moral character[163] – all expressed in "typically Islamic vocabulary . . . ."[164] Another clause required all schools to provide religious instruction, with appropriate teachers for students of various religions.[165] These two clauses polarized the DPR along religious-secular lines, with PDI-P and, initially, Gus Dur's PKB opposing a bill strongly supported by PPP, PAN, and PK (now PKS). Muslim groups lobbied strongly in favor of the bill, while Christian groups opposed it. Golkar sided with proponents, and eventually so did PKB. After sanctions for failure of schools to supply religious instructors were eliminated for the final draft, even PDI-P stated that it would not oppose the law.[166] Presumably, its secular adherents counted on

[162] Law no. 20 of 2003 on the National Education System.

[163] Ibid., preamble, art. 1(1).

[164] Kuskridho Ambardi, "The Making of the Indonesian Multiparty System: A Cartelized Party System and Its Origin," Ph.D. dissertation, Ohio State University, 2008, p. 180. Ambardi's dissertation provides an excellent account of the passage of this law. Ibid., pp. 179–84.

[165] Law no. 20 of 2003, art. 12(1)(a).

[166] Though PDI-P legislators had unsuccessfully requested a delay on the vote, so the party could explain the bill to its supporters, and the PDI-P legislators were absent when the vote was taken.

their ability to resist implementation, but the law nonetheless crossed an important line if Indonesia were to be regarded as a secular state.

Ostensibly because of salacious public performances, a draconian anti-pornography bill was introduced in 2007. Golkar had no difficulty supporting it, as did most other parties. The ad hoc committee appointed to consider the bill was composed heavily of Islamic functionaries from several parties. Faction leaders understood that the bill in the DPR was extreme and undesirable, but it was too late. Rural people think control of pornography is a worthy cause, and parties, especially religious parties, cannot be seen to be pro-pornography.[167] Both Golkar and PD seem to have viewed the bill as an opportunity to poach support from Islamic parties.[168] Yudhoyono, a member of whose party had chaired the drafting committee for the bill, expressed his approval of the proposal, which had never been discussed in the cabinet.[169]

The president may not have been paying full attention as the controversy over the law developed, for the proposal threatened to divide the country. Islamists lobbied hard for passage, but the bill was opposed vigorously by provincial leaders in religious minority areas, such as Bali, where threats of secession were heard, and by elements of the traditionalist NU. The opponents pointed to the compendious restrictions of the bill – which originally included prohibitions on public kissing, inappropriate dress, and nudity in art – in order to argue that it constituted an attempt at backdoor Islamization and Muslim hegemony.[170] Tensions ran very high over this bill, and mass demonstrations threatened to become violent clashes.

Eventually, the bill was scaled back somewhat to provide exceptions for "art and culture," "traditional *adat*," and "traditional ritual," and the revised version was enacted in 2008.[171] The law contains very broad

[167] F.N. 3:85. This account is, interestingly, from a PKS leader. The bill was initially sponsored by PPP and PBB. F.N. 3:88.

[168] For an excellent analysis of the legislative process through which the antipornography bill passed, see Stephen Sherlock, "Parties and Decision-making in the Indonesian Parliament: A Case Study of RUU APP, the Anti-Pornography Bill," *Australian Journal of Asian Law*, vol. 10, no. 2 (December 2008), pp. 159–83.

[169] F.N. 3:112.

[170] See Arskal Salim, "Muslim Politics in Indonesia's Democratization: The Religious Majority and the Rights of Minorities in the Post-New Order Era," in McLeod and MacIntyre, eds., *Indonesia*, pp. 115–37, at pp. 122–26; Pam Allen, "Challenging Diversity? Indonesia's Anti-Pornography Bill," *Asian Studies Review*, vol. 31, no. 2 (June 2007), pp. 101–15.

[171] Law no. 44 of 2008 on Pornography. The exceptions are in article 14. Further exceptions for education and health purposes are in article 15.

prohibitions, still including nudity or almost anything that might incite lust,[172] and severe fines and imprisonment for violations.[173] Governments at all levels are enjoined to prevent the creation, dissemination, and use of pornography.[174] These are powers that are easily abused at the local level. Investigators are also authorized to open electronic data files of private parties in the search for pornography,[175] with no carefully drawn restraints.[176]

The pornography law was passed in the year preceding a presidential election. One of the problems of majority requirements for the presidency and of parties that aspire to catchall status is that, in a time of religious fervor and conformity, it becomes difficult to resist proposals that impinge on religious freedom.

The new law was challenged in the Constitutional Court.[177] The argument advanced by Balinese litigants stressed the constitutional guarantees of legal certainty and equal treatment,[178] among other protections, which, given the breadth and vagueness of the statutory conception of pornography, might give the court reason to question whether the act comports with constitutional requirements. Other petitioners stressed issues of freedom of expression and religion. In the meantime, the governor of Bali declared that, in the interests of Balinese culture and the island's tourist industry, he would not enforce the law.

A well-known hazard of judicial review is for its availability to make legislators less scrupulous about the constitutionality of popular measures, if they believe that excesses will be corrected by the courts. Such beliefs may well have motivated some members of the DPR, at least those not hardcore Islamists, to vote for a poorly crafted statute.

Their expectation may not be wholly amiss. In a public forum in 2008, the chief justice of the Constitutional Court defended a broad conception of judicial review that allowed courts to invent law. "Now, at the moment," he said, "the Court is trying to see the function of a court from a more progressive point of view. So I think we need to do a

[172] Ibid., art. 4.
[173] Ibid., arts. 30–39.
[174] Ibid., arts. 18–20.
[175] Ibid., art. 26.
[176] In a very contentious case that threatened to polarize orthodox Muslims and secularists in 2011, a pop star was convicted for making two sex tapes. Although he contended he had not circulated them, he was given a stiff prison sentence.
[177] Christian groups, NGOs, and Balinese lawyers took the matter to the court. Perkara 010–017–023/PUU/VII/2009 (Mahkamah Konstitusi).
[178] 1945 constitution of Indonesia, as amended, art. 27(1).

breakthrough in the legal field in order to develop law in Indonesia."[179] At another forum, the chief justice defended what he characterized as flexible constitutional interpretation, and he suggested that the role of the court was to keep legislation within the Pancasila ideology. Legislation, he added, must not threaten national integration and must be based on, among other things, tolerance. "If a law in substance is against one of the values mentioned, it must be against the constitution," he declared. "We [the court] will cut it out."[180]

Nevertheless, in March 2010, the Constitutional Court rejected the constitutional challenge to the Anti-Pornography Law from ethnic and religious minorities.[181] Soon thereafter, the Constitutional Court also upheld the constitutionality of the blasphemy law, which dates to 1965 and which had been challenged by an array of NGOs and human rights activists that included former president Gus Dur.[182] The law had been used against the heterodox Ahmadiyah sect, but the court, apparently moved by the danger of vigilantism against religious minorities,[183] reasoned that the protection against blasphemy could be justified on public-order grounds. The court failed to recognize that a declaration of constitutionality, although not formally an endorsement of a statute, has a certain legitimacy function that can "entrench," "solidify," and "impart permanence" to a law that might otherwise be contestable.[184] A dissent contended that the legal limitation to only five or six officially recognized religions in Indonesia violated the freedom of religion contained in the constitution. In government circles, there are still serious concerns about the negative effects on public order of publications that might spread deviant religious

[179] Quoted in "Public Figure Discussion II in Constitution Week: Court's Authority Not Only Counting Votes," Jakarta, Constitutional Court, December 22, 2008.

[180] Quoted in "Mahfud: There Is an Urge to Expand Court's Authority," Jakarta, Constitutional Court, November 6, 2008.

[181] Putusan No. 10-17-23/PUU-VII/2009 (Mahkamah Konstitusi).

[182] Putusan No. 140/PUU-VII/2009 (Mahkamah Konstitusi).

[183] See the interview with the chief justice, *Jakarta Globe*, April 28, 2010, in which he says the blasphemy law "provides the state with the task of preventing the public from taking the law into their own hands when they feel the names of their religions are being tainted." It was, he continued, "to avoid anarchy." For the use of public-order concerns to deny rights to heterodox sects such as the Ahmadis, see Al Khanif, "The Challenge to Implement Religious Freedom for the Minority in Indonesia as a Multicultural State," paper presented at the Southeast Asian Human Rights Network Conference, Bangkok, October 14, 2010.

[184] Alexander M. Bickel, *The Least Dangerous Branch* (Indianapolis: Bobbs Merrill, 1962), p. 129.

views.[185] The result is a restrictive legal environment for religious freedom that, nevertheless, has not reduced vigilantism.

There are other examples of legislative illiberality. A new film law enacted in 2009 enraged filmmakers and minorities. Among other provisions, films and filmmakers were required to uphold correct religious, moral, and national cultural values.[186] Such provisions in Indonesia make minorities wonder just how such values will be defined in the censorship process. This cause was taken up by the PDI-P, which asserted that the film law would "hinder the creativity of individuals [in the film world]."[187] A year earlier, the Constitutional Court had upheld a film censorship law from the Suharto era, but had indicated its expectation that the existing censorship regime would be implemented in a liberal fashion, pending enactment of the new law.[188] Still, the new law was received badly by minorities.

As religious vigilantism has become more common, certain government officials have become complicit. In mid-2011, two killers of Ahmadis in a mob attack received very light sentences, while one of their victims, a man wounded in the attack, was sentenced to a longer term for attacking the leader of the mob. A Supreme Court order that the mayor of Bogor in West Java unseal a church that he had ordered closed was defied by the mayor, who sent security officers to remove congregants. The governor of Jakarta and the police chief of the city attended an event celebrating the twelfth anniversary of the Fron Pembela Islam, the vigilante organization that habitually attacks Ahmadis and advocates of religious freedom. The governors of East Java and West Java have both banned Ahmadi activities in their provinces. In actions such as these, local and provincial authorities claim to have the support of central government authorities, and they are not always wrong. A joint regulation from the Ministry of Religion, the attorney general, and the Ministry of Home Affairs warned Ahmadis not to promote deviant teachings, and a circular permitted local authorities to take steps to insure compliance with the regulation. The rationale was that, as Indonesia recognizes only specified official religions, it was appropriate to forbid deviancy. The regulation also prohibited vigilante action, but this prohibition has scarcely been enforced.

[185] For revealing insights into this mindset, see *Jakarta Post*, January 10, 2010; November 3, 2010.

[186] Law no. 33 of 2009 Concerning Film, arts. 42, 49, 51.

[187] Heri Akhmadi, PDI-P member of the DPR, quoted in the *Jakarta Globe*, September 10, 2009.

[188] Perkara No. 292/PUU-V/2007 (Mahkamah Konstitusi).

As all this was happening, leading politicians at the center said and did little of consequence. A bill that was supposed to promote religious tolerance was proposed in 2011, but it contained a provision that seemed to impose restrictions on proclamations of faith, and it stalled in the DPR after opposition to it surfaced. What seems very clear is that political leaders from the three largest parties, including the president's own party, have been wary of offending any large voting bloc, and this effectively means tolerating the most intolerant segments of the society, who purport to act in the name of the larger Muslim community.

Minority rights have thus become a major issue in democratic Indonesia. The amended Indonesian constitution is richly endowed with guarantees of freedom of religion and expression that, if enforced, can afford considerable protection to minorities. The religious-secular cleavage goes back a century or more. Despite party alliances across that boundary, there are bound to be official actions that impinge on religious freedom. Even in those Western democracies that adopted the institution of judicial review, the rights of religious and ethnic minorities were not always recognized early on. Indonesia's Constitutional Court, however, is a very activist court that has managed to maintain its cohesion and prevail when the DPR had other preferences. If it proceeds skillfully, it can probably enforce constitutional values even in the treacherous area of religious freedom, but it will need more political support.

A major lacuna in this field is the immunity from judicial review of local regulations. The Constitutional Court is empowered to review legislative action only at the national level, but the chief justice of that court has asked for broader authority that would presumably include reviewing claims that arise out of local regulations or central government administrative directives.[189] The slow reaction of the Ministry of Home Affairs to local *Shariah* regulations has made it clear to some central government officials that all constitutional issues should be open to review in a single tribunal.[190]

Beyond the courts, there is another source of support for religious freedom: movements for a tolerant, liberal Islam. Such movements have a significant history in Indonesia in both the modernist and traditionalist streams.[191]

[189] *Jakarta Post*, July 7, 2010.

[190] Interview with a well-placed executive branch official, F.N. 3:71–72.

[191] Much of the material in the remainder of this section derives from an excellent paper by Martin van Bruinessen, "What Happened to the Smiling Face of Indonesian Islam? Muslim Intellectualism and the Conservative Turn in Post-Suharto Indonesia," RSS

An Islamic renewal movement, known as *pembaruan pemikiran agama* (renewal of religious thought), with a decidedly liberal agenda, grew during the 1970s. Participants were willing to engage in discourse with Christian groups and adherents of the heterodox Ahmadis, and they were opposed to anything resembling an Islamic state. The movement's most prominent spokesman was Nurcolish Madjid (d. 2005), who challenged modernist politicians to think beyond Islamic parties and the imposition of ritual obligations. The *pembaruan* movement had a considerable following in modernist circles for about two decades, but it also generated opposition and became dormant after Suharto sponsored a more conservative Muslim organization during his last years.

On the traditionalist side, Abdurrahman Wahid, as chairman of NU until 1999, brought a secularist political sensibility, a sympathy for human rights activism, and a strong belief in interreligious tolerance and discourse. He was not alone in carrying these views to the *pesantren*, schools that are at the center of Indonesian traditionalist Islam. *Ulama* in the *pesantren* were brought into contact with a wider secular world, and a new dialogue was begun on the Islamic approach to ethical, scientific, and even feminist views. At a different level, a movement grew in the early 2000s, among highly educated Muslims on the traditionalist side, usually those with international connections, for what came to be known as a liberal Islam. Leaders of this movement were willing to tolerate syncretistic practices that were anathema to orthodox *ulama*, defended mixed marriages and religious pluralism in general, and opposed both local *Shariah* regulations and the controversial pornography law.

By the mid-2000s, all these movements in both streams were on the defensive as more radical views took center stage. There is, however, no reason to believe that the thinking behind the movements is moribund. Large numbers of Indonesians, in *pesantren* and especially in the educated middle class, have been exposed to liberal ideas, and even at a wider level there is support for them. In 2010, a moderate leader, with a record of support for Muslim-Christian tolerance, was elected to chair NU, and a *kiai* with close ties to the Liberal Islamic Network was elected deputy head of an important NU council.[192] There is a constituency for moderation among observant Muslims. While it may be relatively quiet, it would likely

Working Paper no. 222, Singapore, January 6, 2011, as well as three of my own interviews in Jakarta in 2009. F.N. 3:73, 87–89, 102–03.

[192] See Martin van Bruinessen, "New Leadership, New Policies?" *Inside Indonesia*, vol. 100 (April–June 2010), available at http://www.insideindonesia.org/stories/new-leadership-new-policies-16061325; *Jakarta Globe*, March 27, 2010.

be responsive to conspicuous leadership, from the president or respected Muslim politicians. In the meantime, the rights enjoyed by religious minorities are more precarious than those inscribed in the constitution would suggest.

DEMOCRATIC QUALITY AND THE NEW POLITICAL SYSTEM

In the short and medium terms, not every trace of military immunity from civilian control in Indonesia is likely to disappear, although the armed forces are certainly vulnerable to further whittling away of their prerogatives. All corruption certainly will not disappear, the rule of law will not be uniformly and firmly established, and ethnic and religious tolerance will be tested again and again. Improvements will come slowly. There is some evidence that political corruption flourishes in the early stages of democratization but is likely to decline subsequently.[193] Corruption in the police and courts would be affected indirectly by such changes, as politicians, less vulnerable themselves to exposure, become less willing to protect others.

There are some ways in which improvements in the quality of democracy (at least with respect to corruption), deficiencies in the rule of law, and inadequate minority protection could have perverse consequences for the shape of Indonesia's political system. Corruption, Joseph S. Nye noted in 1967, can "help overcome divisions in a ruling elite that might otherwise result in destructive conflict."[194] It surely has in Indonesia. Corruption lubricates interparty cooperation. There seem to be norms that govern the sharing of the spoils. Although bribery cases are increasingly prosecuted, there has been little inclination to expose the misuse of funds allocated to any particular cabinet department for the political purposes of the minister in charge. Party funding depends, in considerable measure, on such misallocations, and parties are tolerant of each other's diversion of government funds. If misappropriation were to be prosecuted and a major decline

[193] Samuel P. Huntington, *Political Order in Changing Societies* (New Haven: Yale University Press, 1968), p. 59; Larry Diamond, *Developing Democracy: Toward Consolidation* (New Haven: Yale University Press, 1999), p. 240. One line of speculation is that in societies divided along ascriptive or cultural lines, rent seeking by group leaders is the price paid for their willingness to join governing coalitions, but as their control over followers weakens, so will their ability to extract corrupt payoffs. Etienne B. Yehoue, "Ethnic Diversity, Democracy, and Corruption," International Monetary Fund Working Paper, WP/07/218, September 2007.

[194] Joseph S. Nye, "Corruption and Political Development: A Cost-Benefit Analysis," *American Political Science Review*, vol. 61, no. 2 (June 1967), pp. 417–27, at p. 420.

in this sort of graft should occur, scarcity might result in less willingness to share the reduced largess across party lines. Indonesia's oversized cabinets would become less attractive to parties under these conditions. Conceivably, this could simply produce less inclusive governments and a stronger propensity to more straightforward government and opposition. This would be an important systemic effect of reducing corruption. Removal of the pecuniary incentives for interparty cooperation could have a further effect of undermining the basis for agreement among parties divided by culture or ideology. Interparty struggles could then become sharper. Such a result might be less benign.

Improvements in the rule of law and the legal treatment of minorities could also affect the political system in fundamental ways. Given Indonesia's recent history of interreligious killing, there is no reason not to take the Constitutional Court at its word when it says it fears vigilante violence if there were not legal regulation and even prohibition of Islamic heterodoxy, although this is a curious rationale for decisions on constitutional rights. If, however, there were less chance of unpunished religious violence, *and* if the Constitutional Court were more inclined to protect religious heterodoxy, *and* if the rule of law were more firmly established, minorities would obviously be more secure in their legal rights and physical safety.

But suppose a different set of developments, in which anticorruption measures eventually prohibited cabinet ministers from siphoning off ministerial and *yayasan* funds for their parties' benefit, thereby undermining interparty cooperation, and religious heterodoxy received greater constitutional protection, thereby stimulating more open religious conflict. Would the simultaneous emergence of these developments become linked? If the financial incentives for interparty cooperation were to decline as religious conflict intensified, would Indonesia's fluid, cross-stream party alliances be threatened? Would parties line up more solidly along the Muslim versus secular-nationalist cleavage? If solidarity in the legislature against stronger judicial protection of religious minorities should grow, Indonesia could show signs of splitting down the middle, just as it did in November 1998 and threatened to do again over the pornography bill in 2008. The secular foundations of the constitutional order could become more legally secure, while the political foundations for profound religious division were being laid.

These, of course, are sheer speculations, and they do not take account of the electoral incentives that also promote party cooperation across group and cultural lines. These electoral incentives have been very strong, and

they may well withstand a reduction in the other props of cross-stream party cooperation – provided that large-party bias in the electoral law does not produce a sharp reduction in the number of parties in the DPR.

Nevertheless, Indonesia's deficiencies in democratic achievement may be interlinked in peculiar, even surprising ways, and some of them, offensive as they are, may actually have certain benign side effects. If the deficiencies are rectified gradually but surely – and there is no sign they will be rectified very quickly – there will be time for adaptation that should not threaten the shape of the democratic dispensation in fundamental ways. Failure to redress them would be more dangerous.

In the meantime, there is no mistaking the drift toward less robust democratic protections.[195] The attempt to place party functionaries on the electoral commission, which was thwarted by the Constitutional Court; the repeated, often baseless attacks on the Corruption Eradication Commission; the willingness to stamp out minority parties popular in the regions; the blatant intolerance of and vigilante violence against religious minorities, countered neither by the police nor by even a whisper of serious disapproval on the part of political leaders; and, equally fundamental, the unwillingness of responsible leaders to cabin the narrowmindedness of the Religious Affairs Ministry or the Majelis Ulama: these are signs that Indonesia could become, like some other countries in the region, a merely electoral democracy, but without the safeguards and protections necessary for fully democratic status. There are indications that civil society is growing stronger and demanding that political leaders correct these deficiencies, but there are signs of official responsiveness only when protests are very loud and clear.

[195] See Mietzner, "Indonesia's Democratic Stagnation."

8

Causes, Consequences, and the Consequences of the Consequences

There is no single correct path to constitutional democracy, and there is no single set of institutional choices that is best for constitutional democracy in the face of major social divisions. On both counts, finding the best course begins with an assessment of where the society and polity have been historically and where they stand at the time of transition. Admittedly, this is a vague formulation, but the Indonesian case helps identify the relevant variables.

Those who advocate extensive public participation in constitution making and/or creation of separate, independent bodies for constitutional drafting are propounding a prescription that is surely right for many countries but would not have been right for Indonesia.[1] Against the received history of deadlock in the Konstituante, which paved the way for dictatorship, and against the possibility of a secular-nationalist and military veto of dramatic, one-shot constitutional reform, Indonesia's course of gradual, intramural reform was a reasonable choice.

Similarly, those who advocate either proportional representation or plurality or majority-runoff elections as the universally valid electoral choice will have to rest easy in the knowledge that those systems provide different sets of costs and benefits in various contexts, and they will have to contend with Indonesia's demonstration that, in combination, both systems can produce a useful institutional mix for governing a society with a particular cleavage structure.[2] The same goes for other uniform strictures,

[1] See Chapter 1, above.

[2] For a sample of the debate on PR, see the contributions in the *Journal of Democracy*, vol. 2, no. 3 (Summer 1991).

such as those against presidentialism,[3] an institution that functions in Indonesia to create cross-cleavage alliances. A configuration of institutions that reinforces multipolar fluidity and intergroup alliances against the danger of bifurcation must be accounted a success.

THE ORIGINS AND RESULTS OF THE INDONESIAN PROCESS

I have already mentioned some of the causal elements in the choice of gradual, insider-dominated, elections-first constitution making. Throughout this chapter we shall need to do some recapitulation in order to produce a fuller picture.

The desire to avoid a repetition of an instance of failed constitutional reform in the 1950s combined with the participation of possible veto players in 1998 to suggest a path less conducive to early deadlock. This is an important example of remote causes combining with current causes to produce a single effect.[4]

Since I shall stress such conjunctures at several points, it is worth digressing briefly to underscore the general point: the experience of past failures in the creation or maintenance of democracy conditions later approaches to democratization. Decision makers may be right or wrong in their assessment of past failures, but they are likely to have some version of received wisdom in mind as they proceed. There are crystallized memories of salient, complex events that provide capsule versions, available for invocation in current decision making. More often than not, past failures give rise to cautionary tales that amount to courses they should avoid. Hence my reference in Chapter 1 to aversive history.

[3] For the critique of presidentialism, see Juan Linz and Arturo Valenzuela, eds., *The Failure of Presidential Democracy* (Baltimore: Johns Hopkins University Press, 1994); Valerie Bunce, "Comparative Democratization: Big and Bounded Generalizations," *Comparative Political Studies*, vol. 33, nos. 6/7 (August–September 2000), pp. 703–34, at pp. 710–11. Compare Nina Wiesehomeier and Kenneth Benoit, "Presidents, Parties, and Policy Competition," *Journal of Politics*, vol. 71, no. 4 (October 2009), pp. 1435–47, at p. 1446. See also the debate, "Presidents vs. Parliaments," *Journal of Democracy*, vol. 1, no. 4 (Fall 1990).

[4] See Paul Pierson, *Politics in Time: History, Institutions, and Social Analysis* (Princeton: Princeton University Press, 2004), pp. 45–46. See also Robert Jervis, *System Effects: Complexity in Political and Social Life* (Princeton: Princeton University Press, 1997). These books are an excellent corrective to the neglect of remote causes in social science and the need to redress the balance between remote and contemporaneous causation. Remote causes sometimes masquerade as – or are interpreted as – cultural proclivities, but they have their roots in actual experience rather than in mind alone.

The absence of a unified opposition to Suharto, which could have secured a mandate to negotiate with equally credible elements in the crumbling authoritarian regime, had they existed, also made it desirable to proceed to elections first. The existence of several ready-made parties and other legitimate segmental leaders, whose followings merely awaited their formation of additional parties, all of which could be activated for electoral participation, pointed to the same course. Once free elections were held, all segments of the society were well represented in the legislature. It was an advantage that two of the parties that had representation in the authoritarian legislature, Golkar and the PPP, were able to reform themselves sufficiently to be competitive in the 1999 elections and to participate in what was then a completely inclusive reform process. The former authoritarians were not left outside to make mischief. After the process began, the crowds on the street were quiet, and elected leaders, aware of constitutional dissensus and its disintegrative potential, chose to keep constitutional reform in-house.

In the light of prior regime changes, which had produced undemocratic outcomes, it is a good question why, having brought reform in-house, the elected leaders did not stop short of a thoroughgoing democratization. Multipolarity forms part of the answer. In 1959, at the first regime change, Sukarno had the ability to stand above what he could claim was a discredited competitive party system. By the time of the second regime change in 1965–67, there was no longer a competitive system, and Suharto was in a position to grasp control of the only institution that mattered, the army. By 1999, particularly with a critical press freed by Habibie and nipping at the politicians' heels, no single leader could forestall the process.[5] Had one attempted to do so, the others – most of them segmental leaders – would think he or she was seeking an authoritarian advantage. There was, in short, a factional equilibrium that pushed the process of constitutional reform forward.[6]

[5] And I have explained in Chapter 7 why the armed forces were not disposed to intervene.

[6] Compare Adam Przeworski, *Democracy and the Market* (Cambridge: Cambridge University Press, 1991), pp. 83–88, whose prognosis for post-election constitution making is somewhat less sanguine. If the relation of forces is unknown, there is a strong likelihood that the actors will choose checks and balances, protection of minorities, and what he calls "guarantees against ... adversity." Ibid., p. 87. Constitutions written under these conditions are likely to be durable. If the relation of forces is known and balanced, as it may be after elections, then the actors may agree to an institutional framework that is not the preferred one of any actor. That framework could prove durable, he contends, but it is possible that those who do not fare well under these arrangements will try subsequently to overthrow them. Yet the uncertainty attending efforts to overthrow institutions may be sufficient to allow them to survive. For Przeworski, prospects for survival of constitutions adopted in circumstances of

This process, I have shown, had a profound effect on the political institutions that were ultimately selected. I shall say more about this momentarily, but it is worth highlighting some important additional effects of the course that was chosen.

To avoid deadlock, the participants opted to proceed by consensus, thereby setting in motion a lengthy process of interparty consultation and cooperation, whose effects were felt years later in the willingness to form coalitions and tickets for elections of executives across cleavage lines. Extended creation of the constitution became part and parcel of the process of creating democracy, spilling over into the subsequent period.[7] One of the most significant results of the extended process of constitution making was the creation of a large measure of mutual understanding among the participants, who were compelled to gauge each others' sensibilities, preferences, and aversions over the course of years, simply in order to decide what it was feasible to propose and what was infeasible in a setting of consensus decision making. Along the way, MPR members learned a great deal about each other. The constitutional process turned out to be not merely a means to create a legal framework but a means to create accommodation among an otherwise fragmented elite.

Another result of extended consultation was to produce a completed document, rather than one that was silent on important issues that could not have been negotiated successfully in a one-shot process and so could later become a source of festering constitutional contention and failure.[8] After the Fourth Amendment, there were still additional proposals for amendments, such as those concerning the role of the regional house and the possibility of a presidential veto power, but there was no omission that reflected a fundamental clash of values or that would be likely to trigger serious instability. The rules of the game became clearer than they had ever been before in Indonesia.

A powerful MPR, basking in its supremacy at the time of the Gus Dur impeachment and removal, lost nearly all its previous functions and even some new ones, such as constitutional review, that it had been proposed

uncertainty about the relative strength of the actors are better than prospects for constitutional survival when forces are known but balanced.

[7] For the argument that constitutional politics can help educate participants to play normal politics better, see Nathan J. Brown, "Reason, Interest, Rationality, and Passion in Constitution Drafting," *Perspectives on Politics*, vol. 6, no. 4 (December 2008), pp. 675–89, at pp. 684–85.

[8] See ibid., p. 685. The Iraq constitution of 2005 contained a number of such omissions and ambiguities, with strongly negative results for political stability. See Donald L. Horowitz, "The Sunni Moment," *Wall Street Journal*, December 14, 2005.

the MPR assume. Direct election of the president, not particularly likely at the outset, became a reality in stages. Impeachment became a process emphasizing violation of law, rather than differences of policy. The Constitutional Court was accorded considerable authority. Ironically, a slow process produced major changes that would have been precluded in a one-shot process. When Megawati agreed to direct election of the president in the first round, she was not conceding anything about whether a second round would be decided by the voters or the MPR. But the entailments of prior bite-sized reform were felt in the end. Incrementalism made possible many decisions that would have been impossible or productive of dangerous conflict in a one-shot process.

A by-product of the process was a constitution that, although dramatically transformed, resembled the 1945 constitution in form and in its retained preamble. The document was, therefore, a more authentic instrument, more in accord with Indonesian sentiments – even the names of nearly all key institutions were also retained – than a constitution made from scratch and perhaps brimming with the scent of imported institutions.

That is not to say there were no imports, for there were: a territorial distribution requirement and a majority runoff in the presidential elections and various devices for constituency accountability in the context of list-PR elections were the main imports, but even these were adapted as they were adopted. The Indonesian flavor of the new-old constitution certainly made it more acceptable to those who initially doubted the need for a thoroughgoing reworking of the 1945 version.

Along the way, the familiarity of many proposed innovations was detectable. The skeletal remains of the authoritarian regime were the starting point, but there was entirely new flesh put on them. The preservation of the MPR, but with drastically limited functions, made radical reform seem less dramatic. The need to satisfy demands for regional autonomy was an old theme in Indonesia, as were proposals for a second house to represent the regions.[9] Judges had long aspired to have the power of judicial review for constitutionality. Even Megawati's *gotong royong* cabinet had antecedents in the 1950s.[10] The fit of the various parts is by no means perfect, but the product is largely homegrown.

Finally, while the constitution proper was completed in 2002, important refinements, such as changes in the devolution arrangements and in

[9] Herbert Feith, *The Decline of Constitutional Democracy in Indonesia* (Ithaca: Cornell University Press, 1962), pp. 521, 538, 552.

[10] Ibid., p. 542.

the political-party and election laws, were added in 2003, carrying the reform process right up to the 2004 elections.[11] By then, the whole country was more tranquil. Indonesia had had two sets of free legislative elections and one direct election for the president and vice president. In the latter, the incumbent president had been defeated. After 2004, democracy seemed more secure, and the protracted reform process that flowed from one election to the next was probably instrumental in that result. Thereafter, Indonesians voted again, in the first direct elections for regional executives from 2005 to 2008 and for the legislature and president in 2009. In each case, the results were not foreordained, and there were major changes in party fortunes. The decade-long flow of reforms and elections had a certain momentum to it. This was a democratization that moved at varying rates from time to time, but it was without U-turns.[12] The growing reform consensus in the MPR and the growing electoral habit of the voters limited the scope of possible antidemocratic action by actors such as the armed forces.

INSTITUTIONAL CHOICES AND THEIR EFFECTS

In the selection of institutions, the assessment of Indonesian decision makers was deeply colored by their understanding of their history – not to the exclusion of their sense of their current problems or their desire for party advantage, but in conjunction with those elements. Two prominent examples are their choice of legislative electoral system and their choice of presidentialism.

As I have said repeatedly, the Indonesians entertained an abiding fear of a fragmented party system, a fear that rested on their interpretation of the results of the legislative election of 1955.[13] At first, this fear, reinforced by favorable views of the American two-party system, impelled Tim Tujuh to propose first-past-the-post elections in single-member constituencies. When most parties protested that such a system might provide Golkar with an electoral advantage, Habibie, a Golkar man seeking his own electoral

[11] There were, of course, further changes in 2008 and 2010–11, as we have seen in Chapter 6, above.

[12] Compare Staffan Lindberg, *Democratization by Elections* (Baltimore: Johns Hopkins University Press, 2009), arguing that repeated elections in Africa increase the cost of repression and reward democratic behavior by incumbents and opponents.

[13] R. William Liddle refers to enduringly sour feelings about the party fragmentation of the 1950s. R. William Liddle, *Leadership and Culture in Indonesian Politics* (Sydney: Allen and Unwin, 1996), pp. 181–83.

advantage, vetoed the Tim Tujuh proposal. Thereafter, Tim Tujuh devised what proved to be the unworkable individual-candidate feature tacked onto the list-PR electoral system for 1999.[14]

At the same time, of course, requirements for party registration and participation in the elections were made rather difficult. Before each subsequent election, there were further efforts to limit the number of legislative parties, and by 2009 these were becoming effective. The impulse to reduce the number of parties, reinforced by the obvious interests of the large parties, persisted. So, too, did the desire to link candidates more closely to their constituents. This produced a relatively ineffective provision for open lists in 2004 and a much more potent open-list provision in 2009. The culmination of these efforts was the Constitutional Court decision that greatly weakened the impact of the list system, with incalculable effects on intraparty cohesion, as candidates of the same party began to compete with each other for the highest vote total. Attempts to reduce the number of parties, especially at the regional level, were redoubled in the new parties and electoral laws of 2011 and 2012.

An historical interpretation analogous to the fear of fragmentation – and related to it – shaped the initial choice of a presidential system. Because of the negative experience with parliamentary democracy from 1955 to 1959, which many MPR members judged to be a failure, there was a strong presumption in favor of a presidential system, albeit one with effective limitations on executive power, so that no Sukarno or Suharto might emerge in the future. It was understood by most MPR members relatively early that voters would need to participate in choosing the president, but there was no consensus on the design of the presidential electoral system. Among some MPR members, the idea of MPR involvement at some stage in the choice persisted.

Given Indonesia's divisions and the historic fear of territorial fragmentation, the idea grew that the president ought to have a majority mandate. An NGO also pressed for a territorial distribution requirement, which could mitigate the persistent sense in the Outer Islands of Javanese domination. Eventually, a consensus formed around these two ideas, even while it was uncertain whether the MPR or the voters could decide between contesting tickets if a runoff became necessary because one ticket met one set of requirements while another met the other set.

From this point on, there was less to choose than met the eye. With the MPR's authority to select the president in one round surrendered, its

[14] This story has been told in Chapter 3, above.

authority to remove the president at will also had to be surrendered, and its authority to decide a runoff was undercut as well. At the same time, the principal holdout on direct elections, Megawati Sukarnoputri, reassessed her interests and acceded to a popular vote in the second round as well.

With a fragmented party system, it was deemed desirable to limit the ability of smaller parties to nominate candidates, lest the number of presidential tickets proliferate to unmanageable proportions. By 2009, these limits on nomination were increased dramatically, reducing the field to three tickets, two of which (Golkar and PDI-P) barely met the nomination requirements despite the provision allowing parties to combine to nominate candidates. Acting on the intention to limit the impact of a large number of parties very nearly boomeranged on the prospects of two of the three largest parties, which had no choice but to combine with the last two remaining mini-parties to produce competing tickets (all of the others having already nominated SBY). That did prevent some political leaders from wanting to increase nominating requirements further.

The Constitutional Court emerged out of the happy confluence of several conditions, all pointing ineluctably in the same direction: the backwash of the Gus Dur impeachment and the desirability of having a legal decision to check what would otherwise be an entirely political impeachment process; the long-standing quest for judicial review power among Indonesian judges; the desire to create a new, clean court in a discredited judicial system; and the prevalence of separate constitutional courts among independent states recently instituting judicial review.[15] Not much attention was lavished on the creation of the court, which proved to be an exceedingly powerful product of the constitutional reconstruction. By comparative standards, it is a highly activist court, which has intruded prominently into DPR determinations concerning the structure of political competition.

The largest remaining piece in Indonesia's new regime consists of devolution. No part of the constitutional design exemplifies the correspondence of historical and contemporary causes more clearly than the decentralization of political power and financial resources that began in 1999. The rebellions of the late 1950s and of the 1990s were clearly on the minds of those who insisted that Indonesia be a unitary state and those who devised plans for devolution that sharply qualified central power. There was more enthusiasm for devolution in Golkar, with its Outer Island base, than in

[15] By 2005, some 45 percent of constitutions provided for a separate constitutional court, compared to 32 percent that confided judicial review to a general-jurisdiction supreme court.

PDI-P or PKB, with their Javanese strongholds. Habibie's boldness in devolving power and Megawati's and Gus Dur's temporizing – and, in some cases, outright reversals – reflected that. Yet all the major actors proceeded from the same fear of territorial separatism, as was made clear by the decision to confer most power on the district and city levels, rather than on the provincial level, where claims to secession might be made.

What all of these institutional creations show is that causes remote in time can actually become proximate in causality, once they seize the imagination of institutional designers. Often this occurs by analogizing present conditions to past conditions.[16] Sometimes aversive memories provide background scenery against which to view current problems, provoking decisions to avoid a recurrence. Even strong historical recollections, however, do not always triumph easily, if there are countervailing interests of decision makers, as there were, for example, in the case of first-past-the-post elections. But, even then, political memory can return later: the fear of party fragmentation was a recurring concern, as was the hostility toward regional parties, both sentiments consonant, as it happens, with the interests of larger parties.

On some decisions, then, memories of a prior failure were acutely influential, while on others (such as the presidential electoral formula) the consequences of earlier steps in an incremental series proved decisive. Unsurprisingly, the political interest of actors was important in every case, although this was sometimes misjudged, most notably by Megawati. What is remarkable about the whole process is the ability to combine insider benefits with democratic accountability. What is most ironic is that the ex-authoritarian party, Golkar, was most favorably disposed to constitutional change, while the victim of authoritarian methods, PDI-P, proved most reluctant to alter the constitutional status quo.

THE CONSEQUENCES OF THE CONSEQUENCES

"People know what they do; they frequently know why they do what they do," says Foucault in a pithy formulation, "but," he adds, "what they don't know is what they do does."[17] So far I have spoken about causes and consequences. Now it is time to delve further into the consequences of the

[16] For the imperfect role of analogy in the uses of history by policy makers, see Ernest R. May, *"Lessons" of the Past: The Use and Misuse of History in American Foreign Policy* (London: Oxford University Press, 1973).

[17] Quoted in Hubert L. Dreyfus and Paul Rabinow, *Michel Foucault: Beyond Structuralism and Hermeneutics* (2d ed.; Chicago: University of Chicago Press, 1983), p. 187.

consequences, in this case consequences of the institutions shaped by the Indonesian reformers as those institutions intersect with and shape social divisions.

I have described the system the reformers produced as supporting multipolar fluidity. It is necessary to specify how that has worked out and what might have been the result for social divisions if another system had emerged. To do this, we will need to think about comparisons and counterfactuals.

At the outset, consider a brash assertion: "If powerful democrats draft the rules, it does not matter what electoral system is adopted or whether a parliamentary or presidential system is established. Different kinds of democracy can work especially effectively and endure especially long. What matters most is that the powerful are committed to the democratic project."[18] Undoubtedly, this statement is true for some countries, but there may be others in which the very premise of the statement – democratic commitment – results from the institutional structure. Indonesia is a country in which the continuing commitment of "the powerful" would have been affected by which institutions were chosen. And so the assertion about the determinative effect of democratic commitment is certainly not confirmed by Indonesia's experience. Many Indonesian politicians became democrats or were reinforced in their democratic convictions by the web of institutions in which they became enmeshed.

Indonesia's party system historically tracked and, to some degree, still tracks one version of its social cleavages, but far from perfectly.[19] The tracking has made the system multipolar. The imperfections make it fluid. At the risk of some repetition, let us recall – and provide greater specificity on – the characteristics of Indonesia's multipolar fluidity enumerated in Chapter 6.

Parties are, at least in principle, aligned along a principal common axis involving religious affiliation and, among Muslim parties, a subaxis that divides traditionalist from modernist Muslim parties. Parties are identified as either Islamic or secular. Some secular parties embrace the causes and concerns of secular nationalists, *abangan* or syncretist Muslims, and certain ethnic and religious minorities (Chinese, Dayaks, Christians of all ethnic

[18] Michael McFaul, "The Fourth Wave of Democracy and Dictatorship: Noncooperative Transitions in the Postcommunist World," *World Politics*, vol. 54, no. 2 (January 2002), pp. 212–44, at p. 225.

[19] Indonesia exemplifies very well the standard political science view that parties tend to emerge out of social cleavages and can persist even as the salience of particular cleavages rises and falls. See generally Seymour Martin Lipset and Stein Rokkan, eds., *Party Systems and Voter Alignments* (New York: Free Press, 1965).

groups, Balinese Hindus, and Buddhists). Nevertheless, some parties that identify themselves as formally secular, such as Golkar, have significant *santri* Muslim followings, and some, such as Yudhoyono's PD, have proved to be soft on Muslim religious entanglements with the state, as we have seen in Chapter 7, presumably because they aspire to become catchall parties.[20] On the other hand, some parties that are formally Islamic, most notably PKB, have been known to show sympathy for causes associated with secular parties, such as PDI-P; and PKB has actually had non-Muslims in some party positions. Other Muslim parties, even the Islamist PPP, as well as PAN, with its roots in the modernist stream, have reached out to voters in the secular stream as secular parties have gained in strength. In short, parties appear to be converging toward the center. Placing parties precisely on the secular-religious axis has become more difficult.

Orthogonal to the secular-Islamic axis, there might have been a Java–Outer Islands axis. While particular parties have had greater or lesser support in one region or another and have tended to behave accordingly, regionalism is, for historical reasons, so strongly disapproved that no party active at the national level aspires to identify itself as a regional party – which would, in any case, be very difficult to do under the law regulating political parties – or to espouse regional causes, at least explicitly. Furthermore, disproportionate regional support for parties may be declining. As Saiful Mujani and R. William Liddle have pointed out,[21] Golkar, whose vote was previously drawn disproportionately from the Outer Islands, lost some of that support and drew evenly from across Indonesia in 2009. The official disapproval of regional causes has had the not-entirely-happy side effect of pushing politics more exclusively along religious-secular lines than it might otherwise have moved. In other circumstances, one axis might have offset the other, mitigating conflict further, but the Indonesian drafters had an almost obsessive, historically driven aversion to regional causes, deriving from the experience of the 1950s.[22]

[20] For the concept of the catchall party, see Otto Kirchhemier, "The Transformation of West European Party Systems," in Joseph LaPalombara and Myron Weiner, eds., *Political Parties and Political Development* (Princeton: Princeton University Press, 1966), pp. 177–200.

[21] Saiful Mujani and R. William Liddle, "Indonesia: Personalities, Parties, and Voters," *Journal of Democracy*, vol. 21, no. 2 (April 2010), pp. 35–45 at p. 39.

[22] Edward Aspinall has argued that the requirements of the successive parties laws for widespread geographic distribution of branches precluded the emergence of ethnic parties and limited the ability of ethnic movements to capture local institutions. Aspinall, "Indonesia: The Irony of Success," *Journal of Democracy*, vol. 21, no. 2 (April 2010), pp. 20–34 at p. 25. But such requirements had no effect on nationwide religious differences.

Simply by virtue of historical *aliran* divisions, therefore, this began as a multiparty system, with intragroup (or, more accurately, intrastream) party proliferation. PDI-P and PD, for example, are both described as secular-nationalist parties. PKS, PBB, and PAN all have their roots in modernist Islam, although their specific origins derive from particular histories, personal ambitions, and splits described earlier. Smaller parties, formed often as the result of personal and intrafamilial disputes, arose to challenge PKB's representation of traditionalist Muslims, which in any case would not have been monopolistic, given PPP's hybrid status as representative of both traditionalist and modernist Muslims. Although each party may have its core supporters, the penumbra of its support has been highly variable. Vote percentages of parties rise and fall, sometimes dramatically. This is a competitive party system, rather than an ascriptive system, in which group affiliation simply dictates votes and elections are tantamount to a census of group affiliation. There are ascriptive elements in voter allegiance, no doubt. Some people's votes are functions of their subcultural membership, but even those people have choices within their subculture, and increasingly electoral choice is broadening out. This tendency has been reinforced by the general decline of the distinction between *santri* (observant Muslim) and *abangan* (syncretist) subcultures with the growth of a more standard (and observant) public face of Islam across Indonesia in recent decades.

Even in legislative elections, parties such as Golkar, PD, and PAN aspire to catchall status and solicit votes across group affiliations, and voters may oblige. In South Sulawesi, Muslims of the Bugis ethnic group had had affinities to Masjumi until it was banned by Sukarno, but by 2009 they supported Golkar, the party of favorite sons B. J. Habibie and Jusuf Kalla, rather than explicitly Muslim parties, including those in the Masjumi tradition. Christian Minahassians in North Sulawesi and Toraja in the highlands also supported Golkar, despite the long history of Christian-Muslim violence in Sulawesi, rather than the explicitly Christian Partai Damai Sejahtera, a remote successor to Parkindo, a Christian party of the Sukarno era. Other secular parties, such as PD and PDI-P, also have some appeal in Sulawesi, but religious parties are increasingly viewed as too small and powerless to have influence at the center.[23] As we have seen,

[23] See the excellent report by Farish Noor, "Mapping the Religious and Secular Parties in South Sulawesi and Tanah Toraja, Sulawesi, Indonesia," RSIS Working Paper no. 213, Singapore, S. Rajaratnam School of International Studies, Nanyang Technical University, November 12, 2010.

neither PBB nor PDS crossed the threshold for representation in the DPR in 2009. The large parties, disproportionately secular, thus benefit from their preexisting size and from the requirements instituted to prevent legislative fragmentation.

Voter allegiances and party boundaries are both malleable. At both regional and national levels, candidates can and do defect from their parties to join executive tickets nominated by other parties, even parties from a different stream. Candidate fluidity across streams, of course, induces voters who favor particular candidates to follow.

Underpinning the multiplicity of parties is list-PR, which keeps some smaller parties within each stream alive and makes it possible for small new parties, such as Hanura (Wiranto's party) and Gerindra (Prabowo's party), and earlier the PD of Yudhoyono – all, as it happens, in the secular-nationalist stream – to enter the competitive game. The tighter requirements of the most recent parties and electoral laws, however, will make it harder for new entrants to emerge and may well reduce the multipolarity and fluidity of the system.

Voter allegiances are, therefore, fluid. They can and do shift from party to party within streams, as I have just said, and, for regional-executive and presidential elections, and to what seems to be a growing degree for legislative elections, too, shift votes across streams. Cross-stream voting is induced by nominating requirements that reduce the number of possible tickets and create incentives for parties to nominate cross-party and often cross-stream tickets for executive elections, both regional and national. If these nominating incentives were not enough, they are reinforced by electoral systems – plurality with a 25-percent (now 30-percent) minimum to avoid a runoff for regional executive elections, majority for presidential elections – that make it highly desirable for parties to form mixed tickets.[24]

Because of nomination requirements, voters may not be afforded the luxury of voting for a presidential–vice presidential ticket that fits their cultural identity perfectly. In the 2009 presidential elections, as we have seen in Chapter 6, SBY had such a commanding lead that he did not require a vice presidential candidate from a different stream, and the nominating requirements proved so stringent for Megawati, after so many other parties had joined SBY's bandwagon, that she had no choice but to take

[24] For the general tendency of presidential majority-runoff systems to push politics toward the center, see Cynthia McClintock, "Presidential-Election Rules in Latin America: Is Plurality or Runoff Better for Democracy?" unpublished paper, George Washington University, February 2011.

a vice presidential candidate also identified as a secular nationalist. Nonetheless, as the likely results of presidential elections become more uncertain than the 2009 election was, the thrust of the incentives will produce a reversion to mixed tickets in order to capture cross-stream votes. So voter allegiances and party boundaries are both malleable, and candidates, too, can and do defect from parties to join executive tickets nominated by other parties, even parties from a different stream.

The main props supporting this system of multipolar fluidity are, in summary, the joint result of list-PR for legislative elections and the plurality and majority requirements, reinforced by stringent nominating requirements, for executive elections. The consequence is growing fluidity of voter, candidate, and party allegiances, both within and across streams.

I said at the outset that blanket prescriptions for one electoral system or another, or for one form of government or another, are misplaced, because their incentive structures allow them to perform different functions. Now we can see just how this is so. List-PR fosters multipartyism,[25] and that originally made it possible for more than one party per stream to compete. Cleavage lines are fragmented when intergroup competition is accompanied by intragroup competition. A separately elected executive, with a plurality or (especially) a majority mandate, fosters fluidity across group or stream lines, mitigating conflict between groups in yet another way. In addition, similar patterns at the regional electoral level reinforce, and are reinforced by, such patterns at the national level.[26] A president or regional executive elected on cross-group support is not likely to become a merely segmental leader. That, at least, is how those institutional choices have operated in Indonesia, given the starting conditions – what I have referred to as the social endowment – as of 1998. The combination of electoral incentives, horizontally across offices and vertically between levels of government, produces the overall effect.

Only some of these electoral-system choices were made with results of this kind in mind, but they were generally useful choices for avoiding severe social conflict. List-PR produced a downward thrust (that is, proliferation) in party development, contrary to what the drafters wished.

[25] Heterogeneous societies with highly proportional electoral systems tend to have a large number of parties. William Roberts Clark and Matt Golder, "Rehabilitating Duverger's Theory: Testing the Strategic and Mechanical Effects of Electoral Laws," *Comparative Political Studies*, vol. 39, no. 6 (August 2006), pp. 679–708; Octavio Amorim Neto and Gary W. Cox, "Electoral Institutions, Cleavage Structures, and the Number of Parties," *American Journal of Political Science*, vol. 41, no. 1 (January 1997), pp. 149–74.

[26] See Chapter 6, above.

(As explained in Chapter 3, they initially chose PR to avoid giving Golkar an electoral advantage.) Presidentialism (and elected regional executives), with high thresholds for nomination and for electoral success, produced an upward thrust (cross-party, cross-stream alliances), which the drafters generally preferred. Underlying this is a useful, two-sided general approach to conflict mitigation: foster intragroup competition, encourage intergroup alliances.

In such a system, with fluctuations in party support, there are no inevitable, clear winners and losers, no bright line between those groups possessing political power and those excluded from it. Occasionally, issues arise that have the capacity to signify, at least to some extent, inclusion and exclusion; the education, film, and antipornography laws discussed in Chapter 7 are among them. Prosecutions for blasphemy (against Islam) have sometimes served the same divisive function. At such times, alignments polarize. More often, however, this system helps avert polarization; we have seen in Chapter 7 that multipolarity should generally be supportive of the growth of the rule of law, and it is fair to say that a multipolar balance of power is an important part of what preserves democracy in Indonesia, for no party-actor can win a game against constitutional rule. It would require a conspiracy of many actors to make such a coup possible. Even if such a conspiracy could form, defections would be likely. The Constitutional Court possesses the considerable power that it has gained because of Indonesia's multiparty equilibrium.

Would such a system of countervailing incentives have been devised by a constitutional commission or a constituent assembly appointed or elected in 1999 and mandated to report in 2000 or so? No one can say for sure, but the incremental manner in which the complex elements of the overall system unfolded provides much more than a hint that a different set of institutions would have emerged from a one-shot process, even if it had not deadlocked. In any case, some parts of the institutional structure – party regulations, nominating requirements, and so on – derive from statutes enacted one at a time in a series.

Indonesia has never had a system this competitive before. The multipolarity of 1955 to 1959 was far more ascriptive, in that voters were closely tied to their *aliran*, and they also tended to polarize around center-periphery differences. As regional resentment of Jakarta grew in the 1950s, Masjumi was identified with Outer Island causes, while the Nationalist Party and NU were mainly Javanese parties aligned in the struggle against regionalism. There were then few institutions fostering cross-group electoral alignments. As late as 1999, Muslim organizations were strongly

opposed to Megawati's presidential candidacy, and secular nationalists were thoroughly hostile to Habibie.[27] By 2004 and 2009, in contrast, the maneuvering of parties to form coalitions to nominate presidential tickets and the requirements for those tickets to secure election produced cross-stream free-for-alls.

There are costs as well as benefits to multipolar fluidity. Mixed-party presidential and vice presidential tickets can create friction between the leaders, if the vice president becomes the rival of the president. (The same has often been true of regional executives and their deputies, and for the same reasons.) Multiparty cabinets, created because no party even approaches majority status in the legislature, require a great deal of control and supervision, difficult to achieve when the president is dependent on support from the same parties to enact his legislative program. Megawati was undoubtedly too lax when her education minister submitted the draft education law, and Yudhoyono did not control the excesses of his religious affairs minister, but great skill is required to manage such an operation. Even SBY's overwhelming victory in 2009 did not free him of the need for multiparty legislative support – far from it, in fact. When he formed his cabinet after the 2009 elections, he generally accepted names of ministers proposed by his coalition partners; and when he produced a highly anticipated cabinet reshuffle in 2011, there was great public disappointment with the results, which left in place several party leaders who had been thought vulnerable.

A standard political science canard counsels against the combination of a presidential system and a PR legislature. The argument is that deadlock, ideological polarization, and difficult coalition building are all more likely when PR produces a multiparty legislature, and a president with a direct popular mandate has a program to enact. Among 31 stable democracies, none was based on such a combination of institutions.[28]

The evidence against presidentialism combined with multipartyism is, however, not conclusive. A study of transitions to democracy over a

[27] Around the same time, anti-Javanese sentiment was strong in parts of the Outer Islands to which Javanese had migrated. Transmigrants were becoming targets of local resentment, and return migration had picked up, as local inhabitants were "strongly demanding that 'everything' in the regions should be firstly prioritized for the indigenous population ... [providing] a strong indication that the idea of pluralism and social cohesion is in danger in today's Indonesia." Riwanto Tirtosudarmo, "Demographic Engineering and National Integration: Past and Present Experiences in Indonesia," paper presented at the International Workshop on the Unitary State versus Federal State: Searching for an Ideal Form for the Future of the Indonesian State, Jakarta, March 28–30, 2000.

[28] Scott Mainwaring, "Presidentialism, Multipartism, and Democracy," *Comparative Political Studies*, vol. 26, no. 2 (July 1993), pp. 198–228.

65-year period found that the combination of presidentialism and multipartyism did not reduce the probability of democratic consolidation in Third World countries.[29] Multipartyism comes in both polarized and nonpolarized versions, and presidents vary in the inducements to cooperation they can offer to legislators. As Giovanni Sartori has made clear, it is not multipartyism as such that produces polarization. Ideological distance, not the proliferation of parties alone, is conducive to what he calls "polarized pluralism," a system characterized by great distance between the poles and containing anti-system parties that typically anchor the extremes and constitute the bilateral opposition to the center parties.[30] In such systems, parties, especially those on the ends of the spectrum, enter elections to confirm their support rather than to compete for new voters. Indonesia's electoral fluidity, on the other hand, tends to mitigate polarization. As we have observed, even those parties with an Islamist agenda are not content to cultivate their traditional electorates or to rail against the secular constitution; they are keen to expand their support and are able to move to the center and to coalesce with parties at other points along the spectrum. Furthermore, access to the president's cabinet, with its treasure trove of resources to enhance the fisc of the parties represented in it, tends to reduce the occasions for deadlock. Deadlock and polarization are not the result of Indonesia's institutional combination.[31]

[29] Timothy J. Power and Mark J. Gasiorowski, "Institutional Design and Democratic Consolidation in the Third World," *Comparative Political Studies*, vol. 30, no. 2 (April 1997), pp. 123–55. For the conditions underlying the success of multiparty presidential regimes, see Carlos Pereira and André Melo, "The Surprising Success of Multiparty Presidentialism," *Journal of Democracy*, vol. 23, no. 3 (July 2012), pp. 156–70. Indonesia would seem to have these conditions.

[30] Giovanni Sartori, *Parties and Party Systems* (Cambridge: Cambridge University Press, 1976), pp. 124–26, 288–89; Sartori, "European Political Parties: The Case of Polarized Pluralism," in Joseph LaPalombara and Myron Weiner, eds., *Political Parties and Political Development* (Princeton: Princeton University Press, 1966), pp. 137–76.

[31] *A fortiori*, nothing in Indonesia's democratic dispensation can be considered support for Juan Linz's broader argument against presidentialism *tout court*. See Juan J. Linz, "Presidential or Parliamentary Democracy: Does It Make a Difference?" in Juan J. Linz and Arturo Valenzuela, eds., *The Failure of Presidential Democracy* (Baltimore: Johns Hopkins University Press, 1994), pp. 3–87. Both José Antonio Cheibub, *Presidentialism, Parliamentarism, and Democracy* (New York: Cambridge University Press, 2007), and Power and Gasiorowski, "Institutional Design and Democratic Consolidation in the Third World," cast considerable doubt on Linz's argument that a popularly elected president may consider that his or her election confers a mandate greater than it should when dealing with a legislature disproportionately composed of members of parties other than his or her own. Implicitly, Linz is referring to a plurality president, such as Chile's Salvador Allende, who received little more than one-third of the total vote for president in 1973. Indonesia's presidential elections, by contrast, require a majority vote. (But see Linz's strictures on the majority runoff in "Presidential or Parliamentary Democracy," pp. 21–22.) Most of the

Indonesia's multipolar fluidity stands in sharp contrast to the ascriptive party bipolarity, with more or less fixed voter allegiances, found in some of the world's most severely divided states.[32] Where a society is bifurcated in this way, the question of domination is raised starkly, and Indonesia's institutional prescription would be inapt. But even a plurality of groups does not automatically produce anything like the Indonesian configuration. There are other patterns of ascriptive or nearly ascriptive pluralism, in which parties correspond to watertight cultural compartments, cradle-to-grave pillars of social institutions within which adherents live. In such cases, there may be only one party per group or subculture, and party allegiances are, therefore, not in doubt. In some such cases, especially where intergroup conflict is relatively mild, consociational coalitions may be formed to govern, but their components have fixed clienteles and do not compete with each other. This arrangement might be run on the basis of agreed rules by which the segments could limit their contest for power and conceivably manage to survive, albeit more separately than together.[33]

time, the DPR understood the implications of SBY's majority support, and he himself did not push the mandate further than was reasonable – witness the policy battles he won.

The runoff did give SBY problems in his first term, as we have seen, for he needed on his ticket in 2004 a vice presidential candidate who was a popular figure in his own right. The ensuing rivalry Yudhoyono eventually dealt with in 2009 by choosing for vice president a person without an independent political base. While SBY was in a position to solve the problem in this way, candidates lacking his then-soaring popularity may not be able to do the same. The combination of multipartyism and a majority requirement for presidential election constitutes a strong set of incentives for mixed presidential tickets, with concomitant rivalry built in whenever a vice president has a strong position in his or her own party. But this seems a small price to pay for the majority mandate and for the broadly based appeal it requires in what still must be denominated a divided society.

[32] See Horowitz, *Ethnic Groups in Conflict*, pp. 36–41, 360. See also John Stuart Mill, *Representative Government* (Oxford: Blackwell, 1948), pp. 296–97. Compare the literature in international relations, which often equates bipolarity with stability, as in the Cold War. See, e.g., Kenneth Waltz, *Theory of International Politics* (New York: McGraw-Hill, 1979). But Cold War stability may have been due to nuclear deterrence. See Henry Kissinger, *Nuclear Weapons and Foreign Policy* (New York: W.W. Norton, 1969). I am indebted to a discussion by David Siroky, "Secession and Survival: Nations, States and Violent Conflict," Ph.D. dissertation, Duke University, 2009, pp. 29–33.

[33] Arend Lijphart, *The Politics of Accommodation: Pluralism and Democracy in the Netherlands* (Berkeley: University of California Press, 1975). For present purposes, I elide questions about the incidence and efficacy of such arrangements. I merely enumerate this pattern of cleavages and responses to them as an analytic category. For a critique of consociationalism, see Donald L. Horowitz, "Constitutional Design: Proposals versus Processes," in Andrew Reynolds, ed., *The Architecture of Democracy* (Oxford: Oxford University Press, 2002), pp. 15–36.

Indonesia's polity is not of this character. It is not bifurcated but plural and, although plural, not polarized. Neither is it perfectly compartmentalized into fixed segments that could be organized in a consociational dispensation. It has an increasingly competitive multiparty system. Many Indonesians live within particular subcultures, to be sure, and these initially gave rise to subcultural political parties, but without wholly stable clienteles. The translation of pillarization from the society to the party system has never been perfect, and it has become less and less perfect over time. Despite Suharto's attempt to reduce the number of officially recognized parties to three, after 1998 parties easily proliferated, competed, and gradually developed relations across cleavage lines. Ironically, it probably helped that Golkar was intended by Suharto to span cleavage lines and continued that mission in the post-1998 period. Other parties have since done the same. The institutional architecture after Suharto has so far perpetuated pluralist impulses against bifurcation, without encouraging consociational fixity or strong polarization. Multipolar fluidity is something else entirely – and altogether more benign.

GOVERNING HABITS AND THE FUTURE OF DEMOCRACY

Much less benign are two patterns of misplaced cooperation that emerged from the endeavor of producing the new institutions, combined with continuing incentives for political parties. The first is a legislative process founded on notions of quiet collaboration and consensus that may shut affected interests out of policy making and then produce a storm of controversy when bills emerge from the deliberative stage in the DPR. This process has been well described by Stephen Sherlock, and there is no need to rehearse it in detail here.[34] The second consists of greatly oversized

[34] Stephen Sherlock, "Parties and Decision-making in the Indonesian Parliament," *Australian Journal of Asian Law*, vol. 10, no. 2 (December 2008), pp. 159–83. As Sherlock has shown, the legislative process is opaque. There is no consultation with civil society in the first stages of deliberation. Consultations do occur between the executive and the appropriate DPR commission considering an issue. The commissions are representative of all *fraksi*, and *fraksi* leaders negotiate with the commission chair, without much discussion with their respective party leaders. Party discipline at this stage is weak, and much depends on the composition of *fraksi* leaders in any given commission. Each *fraksi* has a veto, which is, in practice, held by the *fraksi* leader. If no veto is exercised, consensus is said to be reached in the commission. Pressure to agree in commissions is strong, which, however, does not foreclose fierce opposition when the bill reaches the DPR floor and parties take positions that may be at odds with those their *fraksi* leaders took in the commission. The combination of low transparency, weak party discipline, and strong pressure for consensus empowers both commission chairs and *fraksi* leaders at the commission stage, but produces an unusually

cabinets that diminish prospects for opposition and accountability. These have been well analyzed, but they are worthy of sustained treatment. Neither of these patterns of cooperation, in legislative commissions and in coalition cabinets, is traceable exclusively to the constitution-making process, but both are strongly rooted in it and over the long term could prove inimical to the maintenance of democracy. The focus here will be on overbroad cabinets.

As the 1999 elections approached, there was a more or less general expectation that the legislature would be divided into governing and opposing coalitions,[35] an expectation supported by the experience of the 1955–59 period of coalitions forming and re-forming. After the 1999 elections, the affinity between PDI-P and PKB seemed at first adequate, with a bit of help from smaller parties, to control the choice of president. The formation of the Central Axis (of Muslim parties) by Amien Rais created another possibility, and it is notable that the choice of Abdurrahman Wahid as president by the MPR was by a sharply divided vote. Consensus decisions were not anticipated at the outset. But Gus Dur's PKB controlled only a small fraction of parliamentary seats, and that rendered him vulnerable to an imposed cabinet composed of all parties in the MPR, which by then had been cooperating intensively in the constitutional process. His attempt to break free of that broad cabinet ended in his removal, followed by Megawati's risk-averse submission to the new precedent, the mandatory character of which was made very clear to her.

The Gus Dur–Megawati experience proved formative. As we have seen, the presidential election of 2004 was preceded by the formation of rival coalitions, but they dissolved once SBY emerged victorious and offered cabinet posts to the losers and Jusuf Kalla brought Golkar into the government. Posts in the DPR were also apportioned inclusively. Were it not for the opposition of PDI-P, governing coalitions would have included all

closed process that minimizes external inputs and opens the possibility of unrepresentative outcomes.

This process is benign when constitutional and electoral issues are being considered, because all parties maintain a keen interest in these issues and follow commission deliberations with care. But when an issue is of disproportionate importance to some parties and of little to others, as was the case with the pornography bill, the process can maximize divisiveness.

[35] For example, F.N. 1:74 (a PKB leader), 1:77–78 (a well-connected director of a civil society organization). See Dan Slater, "Ruling Politics: Power Sharing and Presidentialism in Indonesia," paper presented at the annual meeting of the Association for Asian Studies, Philadelphia, March 2010. The opposition of Muslim organizations to making Megawati president and the equally fervent opposition of secular nationalists to Habibie also suggested the formation of rival camps.

major electoral contestants. Something similar occurred in the run-up to the 2009 election, before SBY's overwhelming popularity produced wide support for his renomination. In 2008, Golkar and PDI-P failed to form a coalition, because Jusuf Kalla of Golkar and Megawati of PDI-P each wished to run for president.[36] In the same year, PKS and PDI-P were also in serious coalition negotiations, but PKS abandoned the idea when it joined SBY's bandwagon. As in 2004, the post-2009 governing coalition was oversized and ideologically diverse. PDI-P, while outside the cabinet, nevertheless held the chair of the MPR.

Close students of the Indonesian party system have labeled it "cartelized."[37] Because of the oversized cabinet, opposition is said to end after elections, with the result that Indonesian politicians "share power more than they fight over it."[38] They put aside their ideological differences to pursue their collective interest in rent seeking.[39] There are somewhat different versions of cartel theory, but the evidence for them consists of promiscuous interparty alliances, inclusive, nonideological cabinets, paucity of opposition, and the tendency of parties to act as a group in the legislature and cabinet. Only in elections do Indonesian parties behave competitively. At other times, they cooperate to distribute largess among themselves, and they put no pressure on government to perform in policy terms. For cartel theorists, their sole interest lies in sharing the spoils of office.

Rent can be extracted from the large number of government-owned companies and from private companies seeking either government action or to avoid government action. And "when a scandal is disclosed to the public, a collective effort must be made by all parties"[40] to suppress full disclosure of the facts and to avert the harmful consequences that might follow.

[36] For the negotiations, see *Kompas*, August 25, 26, 29, 2008. For the initial impetus to continue the PD-Golkar coalition, albeit not necessarily with Jusuf Kalla on the ticket, see *Suara Pembaruan Daily*, April 13, 2009.

[37] For the cartel party, see Richard S. Katz and Peter Mair, "Changing Models of Party Organization: The Emergence of the Cartel Party," *Party Politics*, vol. 1, no. 1 (January 1995), pp. 5–28. Katz and Mair are mainly concerned with cartelization as a limitation on electoral competition. As we shall see, cartel theorists of Indonesia focus on the disjunction between party cartels in government and continuing party competition in elections. This disjunction, I shall suggest, is difficult to maintain over long periods.

[38] Dan Slater, "Indonesia's Accountability Trap: Party Cartels and Presidential Power after Democratic Transition," *Indonesia*, no. 78 (October 2004), pp. 61–92, at p. 62.

[39] Kuskridho Ambardi, "The Making of the Indonesian Multiparty System: A Cartelized Party System and Its Origin," Ph.D. dissertation, Ohio State University, 2008.

[40] Ibid., p. 295.

There is considerable evidence of interparty collusion in the distribution of funds unlawfully collected.[41] After 1999, all parties acquired the privilege of dipping into the till that was once reserved mainly for Golkar. It certainly does appear that parties in government are fair to each other in the apportionment of government funds. This is, of course, the only way such an oversized coalition could remain more or less stable, absent a national emergency.

There cannot be any doubt that rent seeking is a major motive for oversized, inclusive cabinets. Government funds are available for party purposes in a large country in which party funding is otherwise scarce.[42] Beyond appropriated funds, the *yayasan* (foundations) attached to various ministries provide a trove of resources to finance party activities. Party needs will only grow with mass campaigning and televised political advertising of the kind that dominated the 2009 presidential elections. And, of course, there are opportunities for private profit that are open only to those holding government office.

The wider the participation of parties in the cabinet, the less the danger that governmental corruption will be exposed.[43] Presumably, this is one motive for attempts to make the coalition not merely oversized but completely inclusive and for the willingness of partners in a broader coalition to accept a smaller share of the total available spoils than they would receive in a narrower coalition, in which public exposure might be a greater risk.

In spite of all this, there are reasons beyond rent seeking for inclusive cabinets. If there were not such reasons, there would be a number of unexplained puzzles concerning the role of the presidency in Indonesia.

One such puzzle would be why the president would want such an inclusive cabinet,[44] which compromises the interests of his close supporters and reduces the share of government largess available to members of his own party. After the 2009 presidential election, it was very clear that Yudhoyono preferred a thoroughly inclusive cabinet and was miffed by Megawati's insistence on keeping PDI-P on the outside, as she had in 2004. (In 2009, Hanura and Gerindra were also left out, but these were much smaller, new parties.) Moreover, for the parties to distribute rents among

[41] Ibid., pp. 273–306.

[42] F.N. 3:77–78, 82, 84, 97–98.

[43] Cynics do cite a conspiracy of silence as a reason motivating the inclusive coalition. F.N. 3:105.

[44] See Dan Slater, "Unbuilding Blocs: Cleavages and Cartelization in Indonesian Party Politics," paper prepared for the workshop on Political Parties in the Developing World, Princeton University, April–May 2010, pp. 20–24.

themselves, it would be more convenient to have either a parliamentary system or, perhaps better yet, a president appointed by the legislature, which is what Indonesia did have. Deprivation of patronage was an important reason for the removal of Gus Dur. Megawati's laconic presidency and inclusive cabinet were far more agreeable to the MPR on these grounds. Yet the MPR agreed to a separately elected president. And after Gus Dur's removal, the MPR tightened up the legal requirements to remove a president, so as to place removal beyond the reach of a majority of legislators. It seems clear that the MPR aimed to create a separation-of-powers regime, which would be at odds with the parties' single-minded focus on securing control of patronage.

The oversized coalition was rooted in the Gus Dur experience, which produced a hostile, united response in the DPR, but it was sustained thereafter by two other conditions in addition to the lure of lucre. The weak position of SBY in the DPR was one. Another was the strong bond of interparty cooperation that had grown up among legislative leaders after the fall of Suharto.

No post-Suharto president has led a party holding anything approaching a legislative majority. Even in 2009, SBY's plurality of seats was a mere 26 percent, and it had been a fraction of that when he chose his first cabinet in 2004.[45] To achieve a legislative majority by coalescing with larger partners would have been very dangerous for Yudhoyono. Forming an oversized coalition might have reduced what the president could dole out to his own supporters, but it eliminated the blackmail power of individual coalition partners.[46] The weakness of the president's legislative party and the desire for insurance against defections from the cabinet are strong reasons for him, apart from rent seeking, to prefer an inclusive executive. When Golkar joined the government after the 2009 presidential

[45] If evidence is needed of the dangers awaiting a president commanding only a low plurality in the legislature, the ramifications of the Bank Century scandal from 2009 to 2011 provide it. The DPR pursued the possibility of corruption underlying the bailout. Prominent legislators periodically raised the possibility of impeaching the president, even when he commanded an oversized cabinet consisting of members of the same parties whose legislative colleagues were mooting his removal. SBY's position would have been far more precarious had he confronted an opposition cut off from cabinet positions.

[46] Oversized coalitions in India have also been attributed to the desire of the largest parties for "a much stronger bargaining position when its coalition partners or MPs threaten to defect." Steven I. Wilkinson, "Reading the Election Results," in Sumit Ganguly, Larry Diamond, and Marc Plattner, eds., *The State of India's Democracy* (Baltimore: Johns Hopkins University Press, 2007), pp. 24–44, at p. 26. The fear of blackmail was expressed in an interview with a confidant of SBY when he spoke of the unreliability of PKS in keeping a majority coalition in place. F.N. 3:60. Ultimately, PKS was ejected from the cabinet.

election, the coalition then embraced well over 70 percent of the legislature, a figure regarded by the president as affording much more leeway than the 55 percent SBY would have had without Golkar.[47] Three-quarters of the seats seemed safer than a small majority, and Yudhoyono is, by all accounts, a very cautious man.

The desire of the leader of a 26-percent party to have a durable majority in the legislature seems a more compelling reason for an oversized coalition than the other motives so often imputed to SBY: that he has a "thin ear" (*telinga tipis*), meaning that he cannot accept criticism and so resents opposition;[48] that his is the democracy of Mataraman, in other words, of the palace in Jogjakarta, implying that he has a palace style and royal pretensions;[49] or that, like Suharto, he wishes to control the legislature.[50] None of these unproven possibilities – the first of which seems most plausible – would be incompatible with the explanation deriving from legislative weakness and the desire to avoid blackmail, but the latter are clearly sufficient.

In any case, the oversized cabinet would probably not have been possible without the strong norms of interparty cooperation and sharing out of legislative positions that developed during the period of constitutional change from 1999 onward, when division into government and opposition might have stymied the reform project. (Recall that even the DPR's revised standing orders express a preference for consensus.[51]) During this period of constitutional revision, party politicians learned that they could work together.

The large cabinet is also made to appear more natural to the participants as a result of the cross-party, cross-stream executive tickets – often unpredictable in their party composition – that are made necessary by electoral requirements in the regions and at the national level. Of course, those executive contests require only a plurality or majority for victory and so do not necessarily produce electoral coalitions beyond what is required to win them, but, as we observed in Chapter 6, they reinforce the idea that it

[47] F.N. 3:60.

[48] F.N. 3:102 (a moderate Muslim activist); 3:77 (a PDI-P MP); 3:92 (a PKS MP); 3:113 (a former minister). The implication is that SBY prefers no dissent.

[49] See Anwar Hudijono, "Presiden Yudhoyono dan Demokrasi Mataraman," *Kompas.com*, October 15, 2009. Some respondents complained about SBY's distant, passive, indecisive style. F.N. 3:66, 81. Some found him hard to deal with, because of his alleged Javanese royal pretensions, F.N. 3:76, contrasting this with what was said to be the "Islamic style," described as rigid and literal. F.N. 3:83 (a senior PKS leader).

[50] F.N. 3:109 (a highly placed Golkar insider).

[51] See Chapter 3 above.

might be necessary to ally across lines of party and ideology. The cooperative practices that emerged from these developments were lubricated by possibilities for government largess, but the relationship was reciprocal. Cooperative norms also facilitated cooperating in raiding the treasury.

The three conditions supporting oversized coalitions are, then, mutually reinforcing. Their most important consequence is to discourage the emergence of an institutionalized opposition. Even as important voices in Golkar and PDI-P preferred an opposition role,[52] and might have chosen that course had the losing contestant for party chairman won that contest in 2009, Golkar moved easily into SBY's coalition in 2009, as it had in 2004.[53] Similarly, even as PDI-P politicians were willing to suffer another five years in opposition,[54] and most would have voted for uncompromising opposition, had they been given the chance,[55] others concluded that, in the absence of independent resources to run the party, access to government funds was necessary,[56] and there was no strong protest in PDI-P when the MPR chair was given to the party. This was a shrewd choice, because the MPR is the designated site for possible constitutional amendments, two of which are greatly feared within the secular nationalist PDI-P: greater recognition for Islam and a stronger role for the DPD, the regional house.[57] PDI-P could remain in opposition and still have a voice (and a share) in government. There is a good bit of risk aversion that counsels parties to follow *jalan tengah* (the middle of the road), rather than risk punishing opposition.[58]

In a system exhibiting fluidity of voters' party allegiances and a growing propensity for parties to expand their clienteles across boundaries by blurring their ideological commitments, it is easy to overstate the absence of serious policy differences among parties. On religious matters, party differences are palpable, as they were on the pornography law and on

[52] F.N. 3:76 (a well-connected Golkar insider).

[53] F.N. 3:108 (an important Golkar leader). Golkar has a large number of *bupatis* (district executives), who thrive on connections with the central government and are a lobby for the party's inclusion in the coalition.

[54] F.N. 3:77 (a well-informed PDI-P backbencher).

[55] F.N. 3:78 (the same). In the PDI-P, such decisions were made by Megawati.

[56] F.N. 3:98–99 (an influential PDI-P leader).

[57] F.N. 3:100 (a well-known PDI-P leader).

[58] F.N. 3:58 (a sophisticated party operative). Risk aversion pervades such decisions. As of 2009, PDI-P had been in opposition for five years, and its vote share declined. Likewise, PKS has a need to be in government to keep Islamic forces in the mainstream and avoid stigmatization as dangerous radicals. Being in government furnishes protection. F.N. 3:81, 83 (a PKS leader).

proposals to compel modest dress for women. Even on regional issues, differences are observable; witness the divergent orientations toward the scope of autonomy for Papua and its division into two provinces, as well as divergent views on expanding the DPD into a full-fledged upper house. PDI-P opposition led to tempering the provisions in a 2007 statute that was originally intended to attract foreign investors and in the 2009 mining law, which in the end contained mandatory divestments for foreign interests and an obligation for foreign firms to use Indonesian subcontractors unless they could show a clear need for foreign subcontractors.[59] Establishing itself as less favorable to free market policies than was SBY's government, PDI-P in 2005 had also opposed capping expensive fuel subsidies, which the government had proposed. It is true that votes are relatively rarely taken in the DPR, even on contentious issues, but that is attributable to carryover from the constitutional process and its legislative rules, and to the standing orders they produced, as well as to the peculiar legislative process that has emerged,[60] rather than to the desire to keep a cartel intact. It is also true that party resemblances are greater than they were at the outset, but more than just the desire for spoils is at the root of these changes. All of the incentives of the political parties law requiring party offices all over the country, as well as the electoral law incentives fostering cross-party, cross-ideology executive tickets, create a pull toward catch-all parties and, therefore, toward reduced ideological differentiation among the largest parties.

The oversized coalition is thus overdetermined – by the need to extract government funds, by the spillover of interparty cooperation after 1999, and by the needs of a president who leads a minority or plurality legislative party – but that does not mean that the oversized coalition or the paucity of opposition is foreordained. It is not: there are significant politicians in all major parties who would prefer to be in opposition, positioning themselves for the next presidential elections, as we shall see in more detail shortly.

In the short run, an unusually cooperative politics had a number of benefits for Indonesia. Quite obviously, it helped create a democratic constitution, and it softened further the cleavages that might otherwise have endangered the functioning of the democratic dispensation. Over the long term, however, a thoroughly inclusive cabinet is hard to square with the operation of a democracy. It might shield the president and his or her policies from criticism, permitting a measure of authoritarianism, and it might shield

[59] Law no. 25 of 2007 on Investment; Law no. 4 of 2009 on Mining.
[60] See note 34, above.

particular parties from disclosure of wrongdoing that voters would choose to punish at the polls, if they had knowledge of party malfeasance. These are both major democratic deficiencies.

Prospects for the emergence of a serious practice of government and opposition are affected by the mutually reinforcing character of the conditions that support oversized cabinets. If one of the three conditions changes, so can the inclusive scope of cabinets. If corruption in government were to decline, it would be less attractive to be in the cabinet. If parliamentary parties were to become more fractious, as indeed they did become after 2009, and interparty cooperation in the legislature were to decline, the ease of relations in a large cabinet might also decline. If a party that won the presidency also gained a larger share of DPR seats than any has so far, the president's need for a large number of allies would also decline. So the oversized cabinet could well be vulnerable to a change in any of its props.

Suppose, for example, that SBY or another president decided to risk a smaller governing coalition. Such a decision would be perfectly compatible with the desire of politicians to seek the spoils of office. The alternative to the oversized coalition, the minimum winning coalition, is cited precisely for its distributive advantages.[61] That is, the 51-percent coalition secures for its participants twice as much as the 100-percent coalition does. There is a certain perversity to the wholly inclusive proportional sharing of rents. Distributive politics depends upon disproportionate shares as a method of encouraging political support for those with the power to distribute and discouraging support for their opponents. If a president wanted a smaller majority coalition and held a large plurality of DPR seats, he or she might well be able to implement that decision, notwithstanding the desire of excluded parties to force themselves into the coalition.

Economic cartels are vulnerable to defection,[62] as participants come to believe they can profit by selling more at a price lower than the cartel's collusive price. Something analogous may be true of political cartels, in which membership may preclude the possibility of electoral gains. Political-cartel theorists point to the fundamental contradiction between serious interparty preelectoral competition and close postelectoral cooperation in Indonesia. That contradiction is profoundly important in assessing prospects for the emergence of an institutionalized opposition.

[61] William Riker, *The Theory of Political Coalitions* (New Haven: Yale University Press, 1962), pp. 33–39.

[62] See George Stigler, *The Theory of Price*, 3d ed. (New York: Macmillan, 1996), pp. 30–38; John M. Connor, *Global Price Fixing* (Heidelberg: Springer-Verlag, 2008), p. 22.

In the first year or two of a five-year electoral term, it is relatively cost-free for a coalition party to accept the benefits of being in government, but the costs of cooperation increase as elections approach. Legislators begin to voice criticism of the very government in which their parties hold cabinet seats. Electoral advantage is obviously on their mind, for large parties, in particular, are expected to field presidential candidates, and this makes participation in a government led by another party that will field its own presidential ticket difficult to sustain. As a result, the coalition becomes increasingly shaky.

Early in SBY's second term, the Bank Century bailout provided an opportunity for coalition partners to hold hearings in the DPR and tar SBY's close confidants with the brush of scandal. Golkar, ostensibly a committed coalition partner of the president, was conspicuous in keeping the Bank Century case high on the DPR's agenda. Something similar occurred in late 2010, when Golkar and PKS, both represented in the cabinet, succeeded in derailing SBY's nominee for chief of the national police force when the nomination came to the DPR.[63] Stresses in the coalition were exacerbated when a series of scandals affecting several different parties came to light following the Bank Century scandal. A tax official admitted in 2010 to receiving a payment from a group of companies affiliated with the chairman of Golkar, Aburizal al-Bakrie, who had brought his party into SBY's coalition. PKS was embarrassed by a scandal involving a fictitious letter of credit. One of its legislators, who had been deeply involved in the DPR inquiry into the Bank Century bailout, was apparently implicated. PDI-P had a similar problem with a bribery case involving some of its legislators. Eventually, it turned out that some 29 DPR members, 11 from Golkar, 14 from PDI-P, and three from the PPP, were accused of receiving payments in return for supporting the nomination of a candidate to be deputy governor of the central bank.[64] A spouse of a PKS politician was allegedly a conduit for the funds, so the scandal was well distributed among all major parties except the president's PD, but the Southeast Asian Games scandal of 2011 touched his party as well. It seemed that mutual protection had broken down and that these dueling scandals, which came suspiciously thick and fast upon each other, were undoing the interparty understandings that underlay the governing coalition.

To a considerable degree, they were. As the scandals were disclosed, the DPR had become a site of serious interparty contestation in ways the

[63] See *Tempo*, October 20, 2010.
[64] *Jakarta Post*, March 19, 2011.

cabinet never had been. The Bank Century scandal pitted Golkar and PKS against the president's government, although both of those parties were active coalition partners in that government. With a seriously oversized coalition, it is not wholly surprising that opposition might manifest itself in the legislature; something similar had occurred among backbenchers in Northern Ireland's consociational regime. But as scandal-mongering became more intense, it became harder to maintain cooperation in the cabinet in the face of contention in the legislature.

Both Golkar and PKS members of the DPR had been pursuing the Bank Century inquiry most vigorously, and the notion gained ground that SBY's party was pleased to have countervailing ammunition against them. When a closely divided DPR voted down a formal inquiry into the tax corruption matter by 266 to 264, more friction was injected into the coalition. SBY's government opposed the inquiry, as did most legislators of smaller coalition partners, but Golkar, PKS, and PDI-P legislators voted for it. This prompted Yudhoyono to threaten to expel from the cabinet ministers whose parties had voted against the government's position in the DPR and to contemplate offering cabinet positions instead to PDI-P and Gerindra, the latter of which had conspicuously voted with SBY's allies against the inquiry.

By 2011, the Bank Century affair and the DPR's obsessive concern with it had weakened SBY and encouraged his coalition partners to play the double game of governing through cabinet positions and simultaneously opposing through DPR representation. The president's legislative agenda suffered; in 2010, only 16 of the 70 bills submitted to the DPR had been passed. There was talk of impeaching SBY, which was not legally plausible, but the talk served to display the extent to which he had been damaged by his ostensible coalition partners and also may have been intended to give him pause in dismissing cabinet ministers of coalition partners whom he regarded as disloyal. Loyal coalition partners suggested that a narrower coalition of parties that were more solidly bonded was in order,[65] but SBY's instinct was to cast off the disloyal and replace them with parties not previously in the coalition. The net would be a less inclusive coalition, but with a margin of safety closer to 70 than to 50 percent.

When the reshuffle came in 2011, that did not happen. With elections more than three years away, a fractious legislature had nevertheless managed to put the continued practice of inclusive cabinets in doubt. Golkar was divided about staying in the coalition. Golkar chairman Aburizal

[65] It was the PKB that suggested the narrower coalition. For Yudhoyono's rethinking of the coalition, see *Antara* (Jakarta), February 23, 2011.

al-Bakrie affirmed the party's commitment to support SBY, but others suggested a move to the opposition.[66] PKS mooted the idea of withdrawing from the governing coalition and joining with PDI-P to contest the 2014 elections.[67] For the time being, both Golkar and PKS remained in government, and Gerindra and PDI-P remained outside it. In 2012, however, PKS was expelled from the cabinet when it opposed government policy one time too often.

From this increasing contentiousness, several conclusions seem clear. All of them put long-term cartelization into question. That is a good thing for the durability of Indonesian democracy.

First, the inclusive post-electoral coalition may be desirable from the standpoint of parties fearful of five long years deprived of patronage, but it is by no means required by a president, even one with a weak legislative position. He or she can make do with any modestly oversized coalition.

Second, the cartels of 2004–09 and after 2009 were propelled by certain conditions that may not always prevail in Indonesia. In 2004, SBY's Democratic Party had very little legislative representation, and the all-but-PDI-P coalition was his answer to this problem. The post-2009 coalition arose because SBY's immense popularity had induced parties to jump on his bandwagon, mainly before the election, but in Golkar's case (because its then-chairman, Jusuf Kalla, had run against SBY) after the election. When parties are more evenly balanced in legislative representation and in presidential-candidate popularity, the inclusive coalition should be less likely. More even representation may be achieved as smaller parties are eliminated by electoral law changes.

Third, two forces work actively against an inclusive coalition. As the corruption scandals of 2010–11 show, participation in the coalition does not provide consistent immunity from exposure. Even more important, the contradiction between participating in the governing coalition and the exigencies of the next election create costs of coalition participation that become apparent at an early stage, particularly in the sitting president's second term, when he or she is no longer eligible for reelection and when parties other than his therefore have a better chance of winning the presidency. Coalition loyalty is greatly complicated by competitive ambitions in presidential elections.

Ironically, presidentialism, which contributed to the formation of the cartel in the first instance, may defeat cartelized cabinets in the end.

[66] *Jakarta Post*, November 12, 2010.
[67] Ibid., January 13, 2011.

In 2011, PDI-P's chief patron, MPR chairman Taufik Kiemas (Megawati's husband), floated the idea of providing a vice presidential candidate for a ticket with a post-SBY PD candidate at its head in 2014 , but this prospect was not approved by Megawati. Golkar, however, has never failed to offer a presidential candidate, and it can, therefore, scarcely afford to remain a loyal member of a coalition headed by a non-Golkar president and vice president throughout a presidential term. Golkar and any party that calculates that Golkar might win a presidential contest, even years away, will rethink its loyalty to any coalition to which it belongs at every stage of the coalition's term in office. And, if that is true, then a non-Golkar president with sufficient legislative support will hesitate at the outset to put together a completely inclusive coalition that can quickly turn disloyal.

In short, the temptations of defection from the cartel can make construction of the cartel in the first instance more problematic. That is not to say that the conditions underlying cartelized party politics cannot recur in Indonesia. It is only to say that they are variable, rather than constant.

Finally, whatever the cogency of theoretical reasons for ideologically connected post-electoral coalitions – and there are many[68] – we have seen abundant evidence of nonconnected coalitions in Indonesia.[69] As we observed in provincial-level elections,[70] some of this coalition promiscuity is a function of the sheer unpredictability of alignments available to win elections in multiparty jurisdictions, but it is also attributable to the desire of parties to maximize electoral support by aligning with parties that do not compete for votes with each other.[71] The nonconnected coalition may be more difficult to hold together, once it must choose policies in governing, but in Indonesia it is assuredly easier to form, because it emerges out of the pre-electoral need for vote maximization.

[68] See Abraham de Swaan, *Coalition Theories and Cabinet Formation* (Amsterdam: Elsevier, 1973); Michael Lavers and Norman Schofield, *Multiparty Government: The Politics of Coalition in Europe* (New York: Oxford University Press, 1990).

[69] For the same phenomenon in India, see Virginia Van Dyke, "State-Level Politics, Coalitions, and Rapid System Change in India," in Paul R. Brass, ed., *Routledge Handbook of South Asian Politics* (London: Routledge, 2010), pp. 67–82, at p. 71.

[70] See Chapter 6, above.

[71] F.N. 2:70 (a close confidant of Tim Tujuh). For electoral noncompetition as a principle of coalition formation in segmented societies, see Donald L. Horowitz, *Ethnic Groups in Conflict* (Berkley: University of California Press, 2000), pp. 369–78. Compare Sven Groennings, "Notes toward Theories of Coalition Behavior in Multiparty Settings: Formation and Maintenance," in Sven Groennings et al., eds., *The Study of Coalition Behavior* (New York: Holt, Rinehart, and Winston, 1970), pp. 445–65, at pp. 453–54.

CAN THE INDONESIAN EXPERIENCE TRAVEL?

Quite obviously, institutional designers aiming to replicate particular features of Indonesia's political system have some concrete evidence that can inform their efforts. If their aim is to reinforce multipolarity in order to avert bifurcation, or to attempt to counter ascriptive voting patterns and introduce an element of cross-group fluidity, Indonesian electoral techniques might prove useful, assuming broadly similar starting conditions pertaining to group identities in politics.[72]

If, on the other hand, the objective is to reproduce the entire sequence of Indonesian constitutional engineering, the specific elements of path dependence present in Indonesia will make that very difficult. A few initial choices, under certain structural and historical constraints, led to a certain sequencing of crucial events, which led to a particular constitutional process, and so on. The whole sequence was heavily affected by the presence of a pattern of initial conditions that pushed politicians down a path that had a strong impact on what emerged years later. At this level of generality, the Indonesian experience is sui generis.

There is, however, no need to proceed at this level of generality. The sequence can be disaggregated into separate decisions. Some of these decisions will be open in states whose paths differ from those of Indonesia. Of these decisions, perhaps the most critical concerns constitutional process. One can ask whether a lengthy process of in-house deliberation by legislators possessing an electoral mandate and proceeding by consensus has advantages over likely alternatives, such as entrusting constitutional drafting to an expert commission or an elected constituent assembly, or both in that order, with a mandate to produce a completely new constitution by a date certain.

A strong case can be made for the latter processes on the ground that they reduce the chance that those who write the constitution will be the same people who, as legislators, are able to benefit from its provisions and might be affected by prospective self-interest in creating particular rules and institutions in the drafting process.[73] But there are countervailing arguments. The rejoinder from the Indonesian experience is that the

[72] It is necessary to emphasize the importance of starting conditions. Indonesia was a multipolar society that might have become dangerously bifurcated. Other starting conditions, such as long-standing bifurcation, might be well served by completely different electoral prescriptions. See Donald L. Horowitz, "Electoral Systems: A Primer for Decision Makers," *Journal of Democracy*, vol. 14, no. 4 (October 2003), pp. 115–27.

[73] For a powerful argument concerning reason and self-interest, see Jon Elster, "The Optimal Design of a Constituent Assembly," in Hélène Landemore and Jon Elster, eds., *Collective*

slow, consensual, insider-driven process allowed the careful creation of new institutions and the creation of understandings among legislators themselves – understandings that undoubtedly helped mitigate conflicts, not only in the legislature but in the polity that was represented there. Beyond that, the Indonesian process created institutions that the legislators who produced them believed they could live with, even though those institutions did not conform uniformly to their self-interest.[74] The belief of legislators that the new institutions are workable is a supremely important benefit that can emerge from an in-house design. Authorship together with consensus is conducive to developing this belief.

Not all constitution-making processes need to be as meticulously consensual as the Indonesian process was. There is more than one such process available and no ground for asserting that the particular Indonesian method of constitutional renovation is preferable in all situations. Not every set of constitution drafters will be confronted with a veto group harboring an ideology that can produce root-and-branch opposition to new institutions that might be forced on it. We have also seen that the Indonesian process, in spite of its benefits, had several prominent disadvantages. Furthermore, the Indonesian method may not be feasible in many cases. The old, authoritarian constitution may not be sufficiently serviceable in the interim, while a protracted process of renovation is under way.[75] Quicker results than an open-ended period of deliberation can generate may be required in some cases. Political parties or parties-in-waiting may have been insufficiently developed

Wisdom (forthcoming, Cambridge: Cambridge University Press, 2013); Elster, "Clearing and Strengthening the Channels of Constitution-Making," in Tom Ginsburg, ed., *Comparative Constitutional Design* (New York: Cambridge University Press, 2012), pp. 15–30; Elster, "Legislatures as Constituent Assemblies," in Richard Bauman and Tsvi Kahane, eds., *The Least Examined Branch: The Role of Legislatures in the Constitutional State* (Cambridge: Cambridge University Press, 2006), pp. 181–97. From findings derived from their database, Tom Ginsburg, Zachary Elkins, and Justin Blount conclude that constitutions produced by legislatures do not provide more legislative power than do those produced by constituent assemblies. Ginsburg, Elkins, and Blount, "Does the Process of Constitution-Making Matter?" *Annual Review of Law and Social Science*, vol. 5 (2009), pp. 201–23, at p. 213.

[74] For example, the separately elected president. But compare the very limited powers of the DPD.

[75] On the other hand, the authoritarian constitution may, as it did in Indonesia, prove to have sufficient safeguards that it can serve for some time, in the absence of a new settlement, while amendments can be negotiated. This was the case in Chile, too. See Robert Barros, *Constitutionalism and Dictatorship: Pinochet, the Junta, and the 1980 Constitution* (Cambridge: Cambridge University Press, 2002). See also Katja Michalak and Gerald Pech, "Constitutional Design versus Reform in Emerging Democracies: Lessons for Post-Communist Transitions," paper presented at the 2009 annual meeting of the International Studies Association, New York, February 15–18.

under the authoritarian regime to permit relatively quick elections that produce a legitimate legislature able to claim a mandate for constitutional reform. Although the Indonesia of 1998 had many conditions inauspicious for democratic constitutional development, it also had certain legacies that could be turned to an internal reform process. The Indonesian process presents only one model of constitutional renovation, but it does provide a basis for comparative evaluation of competing models under varying circumstances.

There is one class of cases for which the Indonesian reform process ought to receive serious consideration: those seriously divided societies in which divisions about group identity are linked to conflicting visions about the constitution of the state. To be sure, most serious ethnic, religious, cultural, and regional divisions inside a single state have an element of conflicting constitutional vision to them, but there are some that actually revolve centrally around the constitution. For these, participation of contestants on all sides, a lengthy process of deliberation, and a criterion of maximum consensus for successful conclusion of the process can help to avoid conflict over the constitutional product, promote compromise, and dissipate at least some distrust.

There are several clear examples of polities divided over constitutional matters that might have benefited or might still benefit from an Indonesian-style process. Consider Turkey as a paradigm case.

In Turkey, secular nationalists in the Atatürk tradition have been suspicious of the constitutional intentions of a government dominated by an Islamic party with aspirations to alter the Turkish constitution. That party, supported heavily by observant Muslims from inland Anatolia, is thought by secular nationalists, mainly from coastal regions, and by non-Sunni minorities, to be determined to pack judicial and other bodies with its own supporters, to alter the politically neutral character of the presidency, and eventually to overturn Turkey's secular constitution and political culture altogether. A new constitution was contemplated by the government elected in 2007, and an appointed commission produced a draft, but a constitutional crisis involving the wearing of head scarves by female university students resulted in postponement of the full revision. Instead, certain controversial amendments were passed in parliament in 2010 by a majority that required ratification by referendum. The referendum then passed by a 58–42 percent majority. While inland areas voted 95 percent in favor, some urban and coastal areas voted against the proposals by margins as high as 81 percent.[76]

[76] For the background, see Ergun Özbudun and Ömer Faruk Gençkaya, *Democratization and the Politics of Constitution-Making in Turkey* (Budapest: Central European University

Turkey is a polity riven by the secular-religious cleavage, exacerbated by fears of military intervention on one side and of suppression of freedom on the other. Some of these polarizing conditions resemble closely those of Indonesia in 1998. Turkey might well benefit from an inclusive, slow, deliberative, consensual process of constitutional renovation, in which distrust among participants is reduced, even if it is not thoroughly dissipated.

A number of other states are polarized between identity groups with divergent visions of constitutional change deriving from, and impinging critically on, group relations. Bolivia is polarized between indigenous peoples of the western highlands and mestizo and European-origin people of the eastern plains. Constitutional change has been characterized by lockouts of opposition legislators and their boycott of a referendum. The process, tempestuous and divisive, has led to an acceleration of conflict.[77] Iraq's constitution-drafting process, which largely excluded Sunnis and produced a relatively weak federation, deeply at odds with Sunni conceptions of the Iraqi polity, gave considerable impetus to the Sunni insurgency.[78] Taiwan's polarization, between so-called pan-blue and pan-green tendencies, reflects divergent orientations toward China, on one side, and an independent future for Taiwan, on the other, more than it does the ethnic differences between the mainland-origin minority and the Taiwanese majority that were at the root of those divergent orientations decades earlier. Taiwan's cumbersome constitution, with its French-style semipresidential system layered over a distinctive five-branch government, could well stand comprehensive revision. During the presidential term of Chen Shui-bian (2000–08), there were proposals to create a new constitution, but distrust over the possibility that a new constitution might assert a claim to Taiwanese independence – the very

Press, 2009). Özbudun chaired a constitutional commission in 2007. See also Ioannis N. Grigoriadis, "Islam and Democratization in Turkey: Secularism and Trust in a Divided Society," *Democratization*, vol. 16, no. 6 (December 2009), pp. 1194–1213; Michael Thumann, "Turkey's Role Reversals," *Wilson Quarterly*, vol. 34, no. 3 (Summer 2010), pp. 28–33. For the 2010 amendments, see Law No. 5982 Amending Certain Provisions of the Constitution (Ankara: Republic of Turkey, Prime Ministry, 2010).

[77] For the background, see David Landau, "Constitution-Making Gone Wrong," paper presented at the George Washington University Comparative Constitutional Law Roundtable, Washington, DC, March 2, 2012; International Crisis Group, "Bolivia: Rescuing the New Constitution and Democratic Stability," Latin America Briefing no. 18 (June 19, 2008); Fabrice Lehoucq, "Bolivia's Constitutional Breakdown," *Journal of Democracy*, vol. 19, no. 4 (October 2008), pp. 110–24; Willem Assies and Ton Salman, "Ethnicity and Politics in Bolivia," *Ethnopolitics*, vol. 4, no. 3 (September 2005), pp. 269–97. For the controversial provisions, see Constitution of Bolivia (2009), arts. 281–82, 290–97, 302, 305, 410.

[78] See Jonathan Morrow, "Iraq's Constitutional Process II: An Opportunity Lost," United States Institute of Peace Special Report no. 155, Washington, DC, 2005.

subject that forms the core difference between the two camps – preempted that possibility and instead prompted adoption of a referendum law that makes constitutional change very difficult.[79]

There is no need to proliferate these accounts. In each case, the process was neither inclusive nor consensual, and changes were to be legislated in one quick package. Intergroup differences played into the process and made it highly contentious, thereby delegitimizing changes that emerged or might have emerged from it.

At a certain level, of course, all major intergroup conflicts, which involve degrees of inclusion in the polity, could be considered to have constitutional implications. Yet there is a world of difference between, for example, Kenya, in which political inclusion of ethnic groups is a central issue but there is no fundamental ideological difference about the constitution that is anchored in differences between contending groups, and, say, Sri Lanka, where the constitution has come to enshrine the political supremacy of Sinhalese Buddhists and where a constitutional debate would necessarily implicate the claims of minorities to be constitutionally included on equal terms, particularly if these claims entailed federalism. What matters in Kenya is simply whether state institutions can be designed to facilitate and, if possible, guarantee interethnic power sharing. What matters in cases such as Sri Lanka is whether the status of one or both groups will receive constitutional acknowledgment, implicitly or explicitly. Constitutional revision is inherently more precarious and contested in the latter class of cases, and a quick, majoritarian process of producing a new constitution creates a danger of increasing intergroup polarization. That is precisely the serious danger that was averted in Indonesia.[80]

[79] For the background, see Tom Ginsburg, "Constitutional Choices in Taiwan: Implications of Global Trends," Illinois Public Law and Legal Theory Research Paper Series, no. 06–01, Champaign-Urbana, January 2006; Yu-shan Wu, "Taiwan in 2001: Stalemated on All Fronts," *Asian Survey*, vol. 42, no. 1 (January–February 2002), pp. 29–38.

[80] I have suggested that constitutional processes for a certain species of severely divided society should be geared toward developing maximum consensus, although many successful processes in less divided societies, including the United States, have proceeded on a majoritarian or super-majoritarian basis. Consensual constitution making should not be confused with creation of a consensual process of political decision making once the constitution is in place. For an argument for the latter, see Arend Lijphart, *Patterns of Democracy* (New Haven: Yale University Press, 1999). We have seen that greatly oversized cabinets and cartelized participation in Indonesian government reflect some serious pathologies and contain the seeds of others. Elevating consensus above all other values in ordinary governance underrates the importance of criticism and opposition and of the development of competing programs that can win public assent after an adversary process – not to mention the costs of consensual decision making in timeliness and decisiveness when those attributes matter most.

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After the fall of its authoritarian regime in 1998, Indonesia pursued an unusual course of democratization. It was insider-dominated and gradualist, and it involved free elections before a lengthy process of constitutional reform. At the end of the process, Indonesia's amended constitution was essentially a new and thoroughly democratic document. By proceeding as they did, the Indonesians averted the conflict that would have arisen between adherents of the old constitution and proponents of radical, immediate reform. Gradual reform also made possible the adoption of institutions that preserved pluralism and pushed politics toward the center. The resulting democracy has a number of prominent flaws, largely attributable to the process chosen, but is a better outcome than the most likely alternatives. Donald L. Horowitz documents the decisions that gave rise to this distinctive constitutional process. He then traces the effects of the new institutions on Indonesian politics and discusses their shortcomings as well as their achievements in steering Indonesia away from the dangers of polarization and violence, all the while placing the Indonesian story in the context of comparative experience with constitutional design and intergroup conflict.

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Cover design by fred goykhman / PETT Fox, Inc.

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UNIVERSITY PRESS
www.cambridge.org

ISBN 978-1-107-64115-0